# MONTANA ADMINISTRATIVE REGISTER

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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

LABOR AND INDUSTRY, Department of, Title 24

24-16-379 Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Procedures for Wage and Prevailing Wage Claims, Complaints, Investigations, and Appeals. 1713-1725

24-23-384 Notice of Public Hearing on Proposed Adoption - Employer Job Growth Incentive Tax Credit. 1726-1729

LIVESTOCK, Department of, Title 32

32-21-325 (Board of Milk Control) Notice of Proposed Amendment - Milk Control Assessments. No Public Hearing Contemplated. 1730-1732

32-21-326 (Board of Milk Control) Notice of Proposed Amendment - Reports and Records - Computation of the Quota Price and Excess Price to Be Paid to Pool Producers for Pool Milk - Procedures for Pooling of Returns From Pool Milk. No Public Hearing Contemplated. 1733-1735

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-909 Notice of Public Hearing on Proposed Adoption and Amendment - Assisted Living Rules Related to Background Checks and Category D Endorsement. 1736-1756

37-963 Amended Notice of Public Hearing on Proposed Amendment - Comprehensive School and Community Treatment. 1757-1758

REVENUE, Department of, Title 42

42-1045 Notice of Proposed Amendment and Repeal - Electrical Generation and Transmission Facility Exemptions - New or Expanded Industry Credit for Corporate Income Taxes. No Public Hearing Contemplated. 1759-1762

SECRETARY OF STATE, Office of, Title 44

44-2-253 (Office of the Commissioner of Political Practices) Notice of Proposed Amendment - Campaign Finance Laws. No Public Hearing Contemplated. 1763-1767

RULE ADOPTION SECTION

COMMERCE, Department of, Title 8

8-94-191 Notice of Amendment - Administration of the Montana Historic Preservation Grant (MHPG) Program. 1768-1770

ENVIRONMENTAL QUALITY, Department of, Title 17

17-416 (Petroleum Tank Release Compensation Board) Notice of Amendment - Eligibility Determination for Petroleum Storage Tank Cleanup. 1771

TRANSPORTATION, Department of, Title 18

18-185 Notice of Amendment - Utility Relocation Costs. 1772

Page Number

LABOR AND INDUSTRY, Department of, Title 24

24-121-17 (Board of Barbers and Cosmetologists) Notice of Amendment, Adoption, and Repeal - Salons - Shops - Mobile Salons or Shops - Schools - Definitions - General Application and License Display Requirements - Variance Requests - General Requirements and Prohibitions - License General Information - Premises, Fixtures, and General Sanitation - Restrooms - Sinks - Sanitizers - Containers - Cabinets - Implements - Instruments - Supplies - Equipment - Sanitizing - Disinfecting - Preparation Storage - Handling - Prohibited Items - Blood Spills - Continuing Education Instructors - Unprofessional Conduct - Inspections - Name Change - Closure - Change of Ownership - Operation Standards - Lighting. 1773-1775

24-201-54 (Board of Public Accountants) Notice of Amendment and Repeal - Board Organization - Definitions - Firms–Registration - Nonroutine Applications - Board Meetings - Committees - Cheating - Introduction - Renewals. 1776-1777

24-210-47 (Board of Realty Regulation) Notice of Amendment and Adoption - Fee Schedule - Trust Account Requirements - Unprofessional Conduct for Property Management Licensees - Reasonable Supervision - High Level of Supervision. 1778-1782

24-219-36 (Board of Behavioral Health) Notice of Amendment and Repeal - License Requirements for Clinical Social Workers (LCSW), Licensed Master's Social Workers (LMSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), and Licensed Addiction Counselors (LAC) - Examination–LAC - Professional Counselor Licensure Candidate Requirements - Continuing Education Requirements. 1783-1786

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-959 Notice of Adoption and Amendment - Child Care Licensing. 1787-1789

37-961 Notice of Adoption - Public Participation. 1790

37-965 Notice of Adoption - Health Emergency Waiver. 1791

PUBLIC SERVICE REGULATION, Department of, Title 38

38-5-248 Notice of Adoption - Advanced Metering Opt-Out. 1792-1801

Page Number

REVENUE, Department of, Title 42

42-1038 Notice of Amendment and Repeal - 2022 Personal Property Depreciation Schedules and Trend Tables - Updated Business Equipment Exemption. 1802

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1803-1804

How to Use ARM and MAR. 1805

Recent Rulemaking by Agency. 1806-1814

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.16.7506, 24.16.7535, 24.17.103, 24.33.475, 24.35.205, and 24.35.206, the adoption of NEW RULES I through IX, and the repeal of ARM 24.16.7503, 24.16.7514, 24.16.7517, 24.16.7519, 24.16.7521, 24.16.7524, 24.16.7527, 24.16.7531, 24.16.7534, 24.16.7536, 24.16.7537, 24.16.7541, 24.16.7544, 24.17.814, 24.17.817, 24.17.821, 24.17.822, 24.17.824, 24.17.827, 24.17.829, 24.17.831, 24.17.834, 24.17.837, 24.17.838, 24.17.841, 24.17.844, and 24.17.847 pertaining to procedures for wage and prevailing wage claims, complaints, investigations, and appeals | ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL |

TO: All Concerned Persons

1. On January 4, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81945306451, Meeting ID: 819 4530 6451; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 819 4530 6451.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 28, 2021, to advise us of the nature of the accommodation that you need. Please contact Misty Knight, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-7720; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail misknight@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry

(department) is conducting comprehensive reviews of the department's administrative rules. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

The department determined it is reasonably necessary to amend six rules, repeal 27 rules, and adopt nine new rules to consolidate and standardize terminology and processes in the area of wage and prevailing wage claims, complaints, investigations, and appeals. Noting that the majority of these rules have not been revisited or amended in a decade, these changes will also address the various and potentially confusing appeal methods across several regulatory programs. Further, the streamlined new rules will increase department efficiencies by standardizing timelines and requirements for the same processes.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules and provide the complete sources of the department's rulemaking authority.

Therefore, the department is amending and repealing rules and adopting nine new rules to align with the Red Tape Relief Initiative. The proposed new rules will standardize wage claim/complaint terminology, procedures, and timelines across several department programs and locate the provisions in a new, focused subchapter of the Administrative Rules of Montana (ARM). Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.16.7506 DEFINITIONS As used in this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Adverse decision" means a decision by the department that is not favorable to the party ~~who wishes to have the decision reviewed~~ requesting review.

(2) "Claim" or "complaint" means:

(a) a complaint alleging non-compliance with a statute or administrative rule under the jurisdiction of the department;

(b) a request for an audit of an employer's payroll records; or

(c) a field investigation by the department of an employer's payroll.

~~(2)~~ (3) "Commissioner" ~~means the commissioner of labor, and~~ has the same meaning as provided by ~~39-3-201~~ 2-15-1701, MCA.

(3) remains the same but is renumbered (4).

~~(4)~~ (5) "Department" ~~means the Department of Labor and Industry, and~~ has the same meaning as provided by ~~39-3-201~~ 2-15-1701, MCA.

~~(5)~~ (6) "Determination" means a decision by the department ~~as to~~ on the merits of a claim, ~~which states~~ including the ~~amount of~~ wages and penalty ~~(if any) is~~ owed by the employer to the employee.

(6) through (8) remain the same but are renumbered (7) through (9).

~~(9)~~ (10) "~~Formal hearing~~ Hearing" means a contested case~~, held by a department hearing officer, pursuant to~~ per Title 2, chapter 4, part 6, MCA.

~~(10)~~ (11) "Mediation" ~~as used in these rules~~ is the process described by 26-1-813, MCA.

~~(11)~~ (12) "Penalty" means the statutory penalty provided by 39-3-206, MCA, ~~which is~~ assessed by the department against the employer and ~~which is~~ paid to the employee in addition to ~~the~~ any wages owed.

~~(12)~~ (13) "Redetermination" means an informal review by the department, based ~~upon~~ on new or additional information supplied by a party ~~who has received~~ receiving an adverse determination.

(13) remains the same but is renumbered (14).

AUTH: 39-3-202, 39-3-403, MCA
IMP: ~~39-3-202,~~ 39-3-206, 39-3-209, 39-3-211, 39-3-216, ~~39-3-403,~~ 39-3-407, MCA

REASON: The department is amending this rule and ARM 24.17.103 to align with definitions proposed in NEW RULE I and facilitate the use of standardized procedures for wage and prevailing wage claims, complaints, investigations, and appeals across several department programs as proposed in NEW RULES I through IX.

24.16.7535 PAYMENT OF WAGES AND PENALTIES (1) ~~Whenever the department determines~~ Upon a determination that wages ~~and penalty, if any,~~ and/or penalties are due, ~~it~~ the department will advise the employer regarding the method of payment~~. The department may~~ and require the payment:

(a) in either the department's or the claimant's name~~. The department may also require that payment be~~; and

(b) by money order, certified check, or other negotiable instrument.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-201, ~~et seq.,~~ 39-3-206, 39-3-209, 39-3-211, 39-3-407, MCA

REASON: The department is amending this rule to simplify, clarify, and update the rule's language.

24.17.103 DEFINITIONS As used in this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) remains the same.

(2) "Adverse decision" means a decision by the department~~, or a hearing officer~~ that is not favorable to the party ~~who wishes to have the decision reviewed~~ requesting review.

(3) and (4) remain the same.

(5) "Commissioner" ~~means the Commissioner of Labor and Industry,~~ has the same meaning as provided by 2-15-1701, MCA.

(6) remains the same.

(7) ~~"Complaint"~~ "Claim or "complaint" means:

(a) a ~~written~~ complaint alleging non-payment of the standard prevailing wage on a public works contract job;

(b) a ~~written~~ request for an audit of an employer's payroll on a public works contract job; or

(c) a field investigation by the department of an employer's payroll on a public works contract job.

(8) remains the same.

(9) "Department" ~~means the Department of Labor and Industry,~~ has the same meaning as provided by 2-15-1701, MCA.

(10) "Determination" means a decision by the department on the merits of a claim, ~~which states~~ providing the amount of wages and penalty ~~(if any) that may be~~ owed for labor performed on a public works contract job.

(11) through (15) remain the same.

(16) "~~Formal hearing~~ Hearing" means a contested case~~, held by a department hearing officer, pursuant to~~ per Title 2, chapter 4, part 6, MCA.

(17) "Mediation" is the process described by 26-1-813, MCA.

~~(17)~~ (18) "Penalty" means the statutory penalty provided by 18-2-407, MCA, ~~which is~~ assessed by the department against the employer and ~~which is~~ paid to the employee in addition to ~~the~~ any wages owed.

(18) through (20) remain the same but are renumbered (19) through (21).

~~(21)~~ (22) "Redetermination" means an informal review by the department, based upon new or additional information supplied by a party ~~who has received~~ receiving an adverse determination.

(22) through (24) remain the same but are renumbered (23) through (25).

AUTH: 18-2-409, 18-2-431, 39-3-202, MCA

IMP: 18-2-402, 18-2-403, 18-2-409, 18-2-411, 18-2-422, 39-3-201, ~~39-3-202,~~ 39-3-203, 39-3-204, 39-3-205, 39-3-206, 39-3-207, 39-3-208, 39-3-209, 39-3-210, 39-3-211, 39-3-212, 39-3-213, 39-3-214, 39-3-215, 39-3-216, MCA

REASON: See REASON for ARM 24.16.7506.

24.33.475 DISPUTE RESOLUTION PROCESS (1) A person ~~aggrieved by the department's~~ receiving an adverse decision ~~pertaining to that person~~ may request a hearing within ~~30~~ 15 days ~~of the date of the decision~~ from when the adverse decision is sent. ~~All requests for hearing must be made in writing and sent to the department at any of the following addresses:~~

~~(a) Registration Section, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011;~~

~~(b) Registration Section, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, Helena, MT 59601; or~~

~~(c) appeals@mtcontractor.com.~~

(2) The hearing will be conducted as a contested case ~~pursuant to the Montana Administrative Procedure Act,~~ per Title 2, chapter 4, part 6, MCA~~, and the department's rules~~.

~~(3) The hearing and related proceedings will be conducted by the department's Office of Administrative Hearings.~~

~~(4)~~ (3) Because home inspector registration is not a licensing matter, the hearing may be conducted either ~~as a formal~~ formally or ~~informal proceeding~~ informally, at the election of the person requesting the hearing.

(4) A party may appeal the hearing officer's decision to the unemployment insurance appeals board (UIAB) within ten days of the date the decision was sent.

(5) A party may appeal a board decision by requesting judicial review per 39-51-2410, MCA.

AUTH: 2-4-201, 39-9-103, 39-9-212, MCA
IMP: 2-4-603, 39-9-212, 39-9-401, MCA

REASON: It is reasonably necessary to amend (1) by allowing registered construction contractors and home inspectors 15 days to request a hearing following an adverse decision from the department. This change will standardize the timeline for hearing requests with other department programs such as independent contractor registration and wage and hour claims, which are both set in statute. There exists no statutory time for construction contractors' or home inspectors' appeals.

Further amendments remove specific address, web site, and contact information to eliminate the need to amend the rule every time this information changes. The department is adding (4) and (5) to clearly set forth the later appeal processes as established in statute.

24.35.205 BINDING NATURE OF ICCU DECISIONS REGARDING EMPLOYMENT STATUS (1) Unless appealed following mediation ~~pursuant to~~ per 39-71-415, MCA, ~~written~~ ICCU decisions ~~issued by the ICCU~~ are binding on all parties ~~with respect to~~ regarding employment status issues under the jurisdiction of the department and ~~the jurisdiction of~~ any other agency ~~which elects~~ electing to be included as a member of the ICCU. These decisions may affect a party's liability in ~~matters related to~~ unemployment insurance, the Uninsured Employer's Fund, wage and hour ~~issues~~, human rights, and state income tax withholding matters.

(2) Neither the department nor any other agency ~~which elects~~ electing to be included as a member of the ICCU may appeal the ICCU's employment status decision.

(3) remains the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA
IMP: 39-3-212, 39-3-407, 39-51-1109, 39-71-415, 39-71-417, MCA

REASON: The department is amending this rule to simplify, clarify, and update the rule's language, and align with the standardized procedures of NEW RULES I through IX.

24.35.206 MEDIATION AND APPEAL OF ~~DECISIONS REGARDING~~ EMPLOYMENT STATUS (1) ~~After issuance of a decision, a dissatisfied~~ A party receiving an adverse ICCU decision may ~~requesting mediation shall file a written~~

request ~~for~~ mediation ~~with the ICCU~~ within 15 days of the ~~mailing of~~ date the ~~ICCU's~~ decision was sent. The mediation request ~~for mediation~~ is effective upon department receipt ~~by the department, not upon mailing~~. ~~It is the obligation of the requesting party to ensure timely receipt of the request for mediation by the ICCU.~~

~~(2) A request for mediation may be filed in the following ways:~~

~~(a) by mail to P.O. Box 8011; Helena, MT 59604;~~

~~(b) by electronic mail to erdappeal@mt.gov; or~~

~~(c) by facsimile to (406) 444-4140.~~

~~(3) Upon receiving a request for mediation, the ICCU shall provide the mediator a copy of its decision and any other documents it deems relevant.~~

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: ~~2-4-201,~~ 39-3-216, 39-3-407, 39-51-1109, 39-71-415, 39-71-417, 39-71-418, MCA

REASON: The department is amending this rule to simplify, clarify, and update the rule's language, and align with the standardized procedures of NEW RULES I through IX. Further amendments remove specific address, web site, and contact information to eliminate the need to amend the rule every time this information changes.

5. The proposed new rules are as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Adverse decision" means a decision by the department that is not favorable to the party requesting review.

(2) "Claim" or "complaint" means:

(a) a complaint alleging non-compliance with a statute or administrative rule under the jurisdiction of the department;

(b) a request for an audit of an employer's payroll records; or

(c) a field investigation by the department of an employer's payroll.

(3) "Day" means a calendar day.

(4) "Determination" means a decision by the department on the merits of a claim, providing the amount of wages and penalty owed by an employer to an employee.

(5) "Hearing" means a contested case per Title 2, chapter 4, part 6, MCA.

(6) "Mediation" is the process described by 26-1-813, MCA.

(7) "Penalty" means the statutory penalty provided by 18-2-407 and 39-3-206, MCA, assessed by the department against the employer and paid to the employee in addition to any wages owed.

(8) "Redetermination" means an informal review by the department, based on new or additional information supplied by a party receiving an adverse determination.

(9) "Send" or "sent" means the department's method of providing an official decision, determination, redetermination, or other notification to an affected person,

party, or entity, and includes but is not limited to regular, certified, or electronic mail, or personal service.

AUTH: 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-603, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE II TIME PERIODS – SUBMITTING DOCUMENTS TO THE DEPARTMENT (1) Time periods for acts required by these rules will exclude the first day and include the last day, unless the last day falls on a Saturday, Sunday, or legal holiday. In that event, the period runs until the end of the next regular workday, which is not a Saturday, Sunday, or legal holiday.

(2) All claims, complaints, requests, responses, and documents required or allowed to be submitted to the department:

(a) may be submitted in person, by regular mail, electronically (e-mail), by facsimile (fax), or via online portal when available; and

(b) are considered filed with the department on the date the department receives them.

(3) Submissions received after 11:59 p.m. mountain time will have a filing date of the next regular workday.

(4) Parties must ensure that submissions are timely received by the department. Failure, malfunction, or unavailability of electronic equipment does not excuse a party from the requirements of timely filing.

(5) Only one copy of an e-mail or fax submission must be filed even if multiple copies otherwise would be required.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-216, 39-3-407, MCA

NEW RULE III WAGE COMPLAINTS AND INVESTIGATIONS (1) The department will review complaints, claims, or other information received to enforce Montana's wage laws.

(2) The department may conduct investigations without filed complaints, including spot-check inspections of payroll and personnel records, and interviews to ensure compliance with wage laws.

(3) The department will review prevailing wage complaints to determine if the work is subject to federal prevailing wage laws, and if so, will advise the complainant to contact the U.S. Department of Labor.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE IV DETERMINATIONS (1) Following the expiration of an employer's response time, the department will issue a determination of the wages and penalty owed, if any.

(2) The determination will incorporate any decision of the department's independent contractor central unit regarding the employment status.

(3) The department will send a copy of the determination to each party or attorneys of record.

(4) Failure of an employer to timely respond to a claim or complaint may result in the entry of a determination adverse to the employer.

(5) A party receiving an adverse determination may request either a redetermination or a hearing.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 2-4-603, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE V REQUEST FOR RELIEF IF NOTICE NOT RECEIVED

(1) A party alleging untimely or non-receipt of notice of a claim, determination, or hearing has the burden of proving the party should be granted relief. The party seeking relief must present a preponderance of evidence to rebut the statutory presumption in 26-1-602, MCA, that a letter duly directed and mailed was received in the regular course of the mail.

(2) Once a judgment is issued by a district court concerning a decision, any request for relief must be directed to the district court by a party (not the department on behalf of a party) per the Rules of Civil Procedure and be in the form required by the district court.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-216, 39-3-403, MCA
IMP: 2-4-201, 18-2-407, 18-2-409, 39-3-207, 39-3-209, 39-3-210, 39-3-216, 39-3-407, MCA

NEW RULE VI RESPONSES (1) The department will notify all involved parties of a wage claim or complaint.

(2) Employers must respond and provide any requested information by the date specified in the notice.

(a) If requested prior to the response deadline, the department may grant additional response time for good cause shown.

(b) Failure to timely respond may result in a decision adverse to the employer.

(3) If a response alleges the wage claimant is an independent contractor, the working relationship will be analyzed.

(4) If a complaining party fails to provide requested information to the department within specified time frames, the department may dismiss the complaint.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE VII REDETERMINATIONS (1) A party receiving an adverse decision may request a redetermination.

(a) Redeterminations are limited to issues other than employment status.

(b) Parties disagreeing with an employment status decision must raise the issue in the request for redetermination to preserve the issue for a hearing per [NEW RULE VIII].

(2) Redetermination requests must be:

(a) received within 15 days of the date the decision is sent; and

(b) include new or additional information relevant to the disputed issue(s) for the department to consider.

(3) The department will issue a redetermination and send a copy to the parties.

(4) The department will only issue one redetermination for each party receiving an adverse decision.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 2-4-603, 18-2-407, 18-2-409, 18-2-423, 18-2-424, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE VIII HEARING REQUESTS (1) A party receiving an adverse decision may request a contested case hearing within 15 days from the date the decision or redetermination is sent.

(2) Hearing requests must include the names and contact information for the requesting and opposing parties.

(3) For timely, complete requests, the department will first conduct mediation as provided by [NEW RULE IX]. If mediation does not fully resolve the dispute, any unresolved issues will be resolved through contested case proceedings in accordance with Title 2, chapter 4, part 6, MCA.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-403, MCA
IMP: 2-4-201, 2-4-603, 18-2-407, 18-2-409, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

NEW RULE IX MEDIATION (1) Mediations are conducted in accordance with the provisions of 26-1-813, MCA.

(2) The department shall appoint a mediator and notify the parties of the appointment.

(3) The mediator shall contact the parties to establish the mediation procedures and set a time for the mediation.

(4) Mediation must be completed within 45 days from the date the notice of mediator appointment is sent unless all parties and the mediator agree to an extension, or the case is withdrawn.

(5) Following mediation, the mediator shall issue a report as follows:

(a) If mediation resolved the dispute, the report will provide the agreement terms for approval by the parties.

(b) The mediator shall provide appropriate settlement notice, signed by the parties, if such notice is required to dispose of remaining issues.

(c) If mediation does not fully resolve the dispute, the report will provide the parties the opportunity to request a contested case hearing for any unresolved

issues in accordance with Title 2, chapter 4, part 6, MCA. Requests for hearing must be received by the department within ten days from the date the mediator's report is sent.

(d) The mediator may issue a noncooperation report when a party refuses to participate or otherwise comply with the mediation.

(6) As permitted by 2-4-603, MCA, mediation may also be requested by parties to a case at any later time prior to full and final judgment.

AUTH: 2-4-201, 18-2-409, 18-2-431, 39-3-202, 39-3-216, 39-3-403, MCA
IMP: 2-4-201, 2-4-603, 18-2-407, 18-2-409, 39-3-206, 39-3-207, 39-3-209, 39-3-210, 39-3-211, 39-3-216, 39-3-407, MCA

6. The rules proposed to be repealed are as follows:

24.16.7503 PURPOSE

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-202, 39-3-403, MCA

24.16.7514 COMPUTATION OF TIME PERIODS

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-202, 39-3-403, MCA

24.16.7517 ELECTRONIC FILINGS

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-202, 39-3-211, 39-3-403, 39-3-407, MCA

24.16.7519 WAGE COMPLAINTS AND INVESTIGATIONS

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-209, 39-3-210, MCA

24.16.7521 FILING A CLAIM

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-211, 39-3-407, MCA

24.16.7524 EMPLOYEE'S FAILURE TO PROVIDE INFORMATION

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-210, MCA

24.16.7527 EMPLOYER RESPONSE TO CLAIM

AUTH: 39-3-202, 39-3-403, MCA

IMP: 39-3-209, 39-3-210, 39-3-407, MCA

24.16.7531 DETERMINATION

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-209, 39-3-210, MCA

24.16.7534 REQUEST FOR REDETERMINATION

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-209, MCA

24.16.7536 MEDIATION PROCEDURES

AUTH: 39-3-202, MCA
IMP: 2-4-603, 39-3-216, MCA

24.16.7537 REQUEST FOR FORMAL HEARING

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-216, MCA

24.16.7541 DEFAULT ORDERS AND DISMISSALS

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-216, MCA

24.16.7544 REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-216, MCA

24.17.814 COMPUTATION OF TIME PERIODS

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, MCA

24.17.817 FACSIMILE FILINGS

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, MCA

24.17.821 FILING COMPLAINTS

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-207, 39-3-209, 39-3-210, 39-3-211, MCA

24.17.822 JURISDICTIONAL REVIEW

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210, 39-3-211, MCA

24.17.824 REQUESTING PARTY'S FAILURE TO PROVIDE INFORMATION

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210, 39-3-211, MCA

24.17.827 EMPLOYER RESPONSE TO COMPLAINT

AUTH: 18-2-423, 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-424, 39-3-201, 39-3-209, 39-3-210, 39-3-211, MCA

24.17.829 DEPARTMENT REVIEW OF EMPLOYER RECORDS

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-424, 39-3-201 through 39-3-216, MCA

24.17.831 DETERMINATION

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201 through 39-3-216, MCA

24.17.834 REQUEST FOR REDETERMINATION

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, MCA

24.17.837 REQUEST FOR FORMAL HEARING

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-216, MCA

24.17.838 MANDATORY, NONBINDING MEDIATION

AUTH: 18-2-431, 39-3-202, MCA
IMP: 39-3-216, MCA

24.17.841 DEFAULT ORDERS AND DISMISSALS

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-212, 39-3-216, MCA

24.17.844 REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, MCA

24.17.847 APPEAL OF FORMAL HEARING

AUTH: 18-2-431, 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-216, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Misty Knight, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; facsimile (406) 444-4140; or e-mail misknight@mt.gov, and must be received no later than 5:00 p.m., January 7, 2022.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through V pertaining to the employer job growth incentive tax credit | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On January 6, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/86787894730, Meeting ID: 867 8789 4730; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 867 8789 4730.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Michael Peery, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5539; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mpeery@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity for the department to implement 39-11-404, MCA, the Employer Job Growth Incentive Tax Credit, as authorized by Chapter 550, Laws of 2021 (House Bill 629). The new law creates a tax credit for employers who foster job growth in specific industries in Montana and includes rulemaking authority for the department to administer the certification necessary to claim the credit. The department will review applications for certification from employers. The credit is available for tax years beginning after December 31, 2021. This proposal includes New Rules I through V for qualifications to apply for the credit certificate.

4. The proposed new rules are as follows:

NEW RULE I CREDIT FOR EMPLOYER JOB GROWTH (1) Any employer seeking the tax credit must apply for the credit certificate by January 31 of the year following the tax year for which the certificate is requested.

(2) The department must provide the credit certificate before an employer may claim a tax credit. Once a certificate is issued to an employer, the employer may claim it on a tax return. An employer must provide the credit certificate number to the Department of Revenue when claiming the tax credit on a tax return.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

NEW RULE II REQUIRED DOCUMENTATION (1) A complete application shall include:

(a) all information needed to determine the number of full-time employees (FTEs) employed by the company in Montana in 2021, including number employed and hours worked;

(b) all statewide employees of the employer who have been hired during the last calendar year, along with identifying information;

(c) dates of hire of each employee listed;

(d) benefits provided to each employee listed;

(e) Montana-source wages paid to each employee listed during the tax year; and

(f) date of hire and date of separation if no longer employed for each employee listed.

(2) An employer shall submit a brief statement as to how the job growth is associated with a project in the state that encourages, promotes, and stimulates economic development in the sectors of construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, as defined in the North American Industry Classification System (2017), or outdoor recreation, as defined by the Bureau of Economic Analysis. This description must include the location of the project.

(3) Employers must provide identifying information for any predecessors or business transfers as defined in 39-11-404, MCA, that have affected the company since 2021.

(4) The department may request any additional information necessary to determine whether an employer is eligible to receive the credit, including data needed for auditing purposes.

(5) If the employer did not pay any Montana-source wages in 2021, it must submit all information required by (1) through (4) on the date the employer began paying Montana-source wages.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

NEW RULE III DEFICIENT APPLICATIONS (1) An employer seeking a credit certificate must apply on forms provided by the department.

(2) Applications must be complete to be reviewed.

(3) Incomplete applications will expire 90 days after submission.

(4) If an application is deemed deficient, the department must notify the applicant in writing, with the specific reasons the application is deficient.

(a) An applicant may submit information to cure the deficiency within 30 days from the mailing of the department's notification of the deficiency. Failure or refusal to submit further information means the department's notification is final.

(b) If an applicant timely submits information intended to cure the deficiency, the department shall review the application and new information. The department shall grant or deny the certification pursuant to these rules. The denial of a certification may be appealed pursuant to [NEW RULE IV].

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

NEW RULE IV APPEAL OF CERTIFICATION DENIAL (1) An applicant who has attempted to cure deficiencies and whose certification was nonetheless denied may request a hearing.

(2) A request for hearing must be made within 30 days of the date of mailing of the denial of certification. The request must identify the denial being disputed and the basis upon which the dispute is being made. The request for hearing must be sent to jobgrowthtaxcreditprogram@mt.gov.

(3) A hearing requested pursuant to this rule will be conducted pursuant to Title 2, chapter 4, MCA.

(4) The applicant bears the burden of demonstrating that the department's denial constitutes an abuse of discretion.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

NEW RULE V AMERICAN RESCUE PLAN ACT SAVINGS CLAUSE

(1) The tax credit will be available to claim unless the budget director provides a certification in writing to the legislative finance committee as specified in [Section 25, Chapter 550, Laws of 2021] that the implementation of the credit in a given year will:

(a) result in a reduction of funds under the American Rescue Plan Act; or

(b) require the state to repay or refund the federal government pursuant to the American Rescue Plan Act.

(2) If the relevant contingency as provided for in (1) occurs, the credit will not be available in the taxable year following the budget director's determination.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Michael Peery, Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail mpeery@mt.gov, and must be received no later than 5:00 p.m., January 10, 2022.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on October 19, 2021.

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses.

Small businesses impacted by this proposal include any associated with a project in the state that encourages, promotes, and stimulates economic development in the sectors of construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, or outdoor recreation that have fewer than 50 employees.

The probable significant and direct effects of the proposed rules on the small businesses identified include a tax credit based on a growth of the small business to include more employees. It is a positive significant and direct impact on the small businesses.

The department finds that the impact will allow small businesses to maintain excess funds or have cash available which would normally be as part of taxes paid to the state. The department has not considered any alternative options to the implementation of the credit as it does not adversely affect small businesses and is required by legislation.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 32.24.450 milk control assessments | ) | NOTICE OF PROPOSED AMENDMENT |
| | ) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Board of Milk Control (board), which is administratively attached to the Department of Livestock, proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.24.450 MILK CONTROL ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments are levied upon the Act licensees of this department for the purpose of securing funds to administer and enforce the Act.

(a) A fee of $0.0475 ~~$0.05250~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Act produced and sold by a producer-distributor.

(b) A fee of $0.02375 ~~$0.02625~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Act sold by a producer.

(c) A fee of $0.02375 ~~$0.02625~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of milk subject to the Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) through (6) remain the same.

AUTH: 81-23-102, 81-23-104, 81-23-202, MCA
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes to amend the above-stated rule:

- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2021; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The proposed amendments to ARM 32.24.450 would affect approximately 118 businesses licensed by the Milk Control Bureau.

The proposed assessment rates would decrease milk control assessment revenue by approximately $15,195.

4. The board intends to adopt the proposed amendment effective July 1, 2022.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 7, 2022.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., January 7, 2022.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12, based upon there being approximately 118 businesses licensed by the Milk Control Bureau that are currently operating.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

| | |
|---|---|
| /s/ Ken Bryan | /s/ Cinda Young-Eichenfels |
| Ken Bryan | Cinda Young-Eichenfels |
| Chair | Rule Reviewer |
| Board of Milk Control | Department of Livestock |

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 32.24.512 reports and records, 32.24.513 computation of the quota price and excess price to be paid to pool producers for pool milk, and 32.24.514 procedures for pooling of returns from pool milk | ) ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Board of Milk Control (board), which is administratively attached to the Department of Livestock, proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.24.512 REPORTS AND RECORDS (1) through (5) remain the same.

~~(6) The operator of the plant at the Montana State Prison is subject to all records and reporting requirements of this rule for milk utilized at the plant, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.~~

AUTH: 81-23-104, 81-23-302, 81-23-303, 81-23-402, MCA
IMP: 81-23-302, 81-23-303, 81-23-402, MCA

32.24.513 COMPUTATION OF THE QUOTA PRICE AND EXCESS PRICE TO BE PAID TO POOL PRODUCERS FOR POOL MILK (1) On or before the 12th day of each month, or the first business day thereafter, the bureau will compute a quota price and an excess price for the preceding month as follows:

(a) Calculate the utilization value of butterfat and skim usage of pool producers' milk for all pool handlers ~~and for milk processed at the Montana State Prison plant~~ to determine a total dollar amount for butterfat and skim respectively.

(b) through (2) remain the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

32.24.514 PROCEDURES FOR POOLING OF RETURNS FROM POOL MILK (1) through (4) remain the same.

~~(5) The bureau will report applicable information described in (1) through (4) to the operator of the plant at the Montana State Prison, regardless of whether the plant is a pool plant or whether the plant utilizes pool milk.~~

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rules to allow the Montana State Prison to transition to a producer-distributor from a pool producer.

The proposed amendments to ARM 32.24.512(6), 32.24.513(1)(a), and 32.24.514(5) would affect approximately 43 businesses licensed by the Milk Control Bureau.

The proposed removal of the Montana Correctional Enterprise from the milk pool would reduce the monthly pool payment by $1,982.88.

4. The board intends to adopt the proposed amendments effective March 1, 2022.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 7, 2022.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., January 7, 2022.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12, based upon there being approximately 118 businesses licensed by the Milk Control Bureau that are currently operating.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Ken Bryan
Ken Bryan
Chair
Board of Milk Control

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer
Department of Livestock

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through IX and the amendment of ARM 37.106.2802, 37.106.2803, 37.106.2804, 37.106.2805, 37.106.2809, 37.106.2814, 37.106.2815, 37.106.2816, 37.106.2817, 37.106.2821, 37.106.2822, 37.106.2823, 37.106.2824, 37.106.2829, 37.106.2835, 37.106.2836, 37.106.2838, 37.106.2847, 37.106.2849, 37.106.2854, 37.106.2855, 37.106.2860, 37.106.2866, 37.106.2875, 37.106.2885, 37.106.2886, 37.106.2896, and 37.106.2904 pertaining to assisted living rules related to background checks and category D endorsement | ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT |

TO: All Concerned Persons

1. On December 30, 2021, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81491514745; meeting ID: 814 9151 4745; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 814 9151 4745. Find your local number: https://mt-gov.zoom.us/u/kTY6SkMTo.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 16, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I CATEGORY D: CONSTRUCTION (1) Category D services must be provided in a secured care unit and meet all requirements in ARM 37.106.316.

(2) A category D facility shall be either:

(a) a stand-alone secured facility; or

(b) a separate, secured unit attached to a category A, B, and/or C facility.

(3) A category D unit attached to a category A, B, and/or C facility must have a separate entrance/exit and impenetrable doors used to separate the Category D unit from the other units.

(4) The facility must devise a policy on how it plans to maintain security of the facility or unit.

(5) A category D facility or unit must have at least 1 seclusion room for every 24 residents. The room must meet the requirements set forth in [NEW RULE IX].

(6) A category D facility or unit must not use automatic door closures unless required. If required, such closures must be mounted on the public side of the door.

(7) All hardware and lights used in a category D facility or unit must be tamper-proof.

(8) All resident room doors must include a sight window.

(9) No more than one client must reside in a resident room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE II CATEGORY D: ADMINISTRATOR QUALIFICATIONS (1) In addition to requirements in ARM 37.106.2873, an administrator for a category D facility must have a least 3 years' experience in the field of mental health.

(2) Of the 16 hours of annual continued education training required in ARM 37.106.2814, 8 hours must be in the field of mental health.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE III CATEGORY D: DISCLOSURE TO CATEGORY D RESIDENTS (1) Each assisted living category D facility or unit must, prior to admission, inform the resident or resident's legal representative in writing of the following:

(a) the overall philosophy and mission of the facility regarding meeting the needs of residents with mental illness and the form of care or treatment offered;

(b) the process and criteria for admission and discharge;

(c) the process used for resident assessments;

(d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;

(e) staff training and continuing education practices;

(f) the physical environment and design features appropriate to support the functioning of mentally disabled residents, including features for the resident who requires seclusion and restraint;

(g) the frequency and type of resident activities; and

(h) any additional costs of care or fees.

(2) The facility must obtain from the resident or resident's legal representative a written acknowledgment that the information specified was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IV CATEGORY D: STAFF (1) A category D facility must have the following staff:

(a) a registered nurse (RN) must be on duty or on call and available physically to the facility within one hour;

(b) a full-time licensed mental health professional. This person must be site-based; and

(c) direct care staff in sufficient number to meet the needs of the residents. Direct care staff must be certified nursing assistants.

(2) In addition to requirements in ARM 37.106.2816, all staff must:

(a) be at least 18 years old;

(b) complete an FBI fingerprint background check upon hiring;

(c) complete 6 hours of annual training related to mental health;

(d) complete training requirements in ARM 37.106.2908; and

(e) complete training on de-escalation techniques and methods of managing resident behaviors.

(3) All staff must remain awake, fully dressed, and available on the unit at all times when they are on duty.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE V CATEGORY D: RESIDENT ASSESSMENTS (1) A category D facility must obtain or conduct three types of resident assessments for each resident:

(a) Prior to move in, the facility shall obtain the court determination documentation required in 50-5-224(3), MCA, as well as a full medical history and physical and mental health assessment.

(b) A resident needs assessment shall be completed within 7 days prior to admission to facility. The assessment shall be reviewed/updated quarterly, and upon significant change in status.

(c) The administrator, or designee, will request and retain copies of the healthcare assessment and written order for care completed monthly by the practitioner as defined in 50-50-226(5), MCA.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VI CATEGORY D: HEALTH CARE PLAN (1) In addition to requirements in ARM 37.106.2875, the health care plan for a category D resident must include:

(a) de-escalation techniques individualized to the resident;

(b) circumstances when the resident may need to be isolated from other residents;

(c) behaviors and/or situations in which a staff member may need to obtain orders for restraints and/or isolation; and

(d) the requirements listed in ARM 37.106.2905.

(2) The health care plan must be reviewed and updated quarterly and upon significant change in status.

(3) Each direct care staff must document that they have reviewed and are capable of implementing each resident's health care plan.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VII CATEGORY D: MEDICATION USE AND PHYSICIAN ORDERS (1) All category D residents must be assessed on their ability and be encouraged to self-administer their own medication. If a resident is unable or unwilling to self-administer his or her medication, a licensed nurse shall administer all medication and the resident must be classified as a category B resident.

(2) When a resident refuses a medication, the resident practitioner shall be notified within 24 hours and notification documented.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VIII CATEGORY D: DISCHARGE (1) A comprehensive discharge plan directly linked to the behaviors and symptoms that resulted in admission and estimated length of stay must be developed upon admission.

(2) A resident's diversion order is discontinued when:

(a) the resident and facility choose to allow continued residency. A resident needs assessment must be completed to determine category and placement within facility;

(b) the resident chooses not to remain in the facility. The facility shall issue a 30-day notice and conduct discharge planning. Discharge planning must include involvement from community resources.

(3) A resident may be involuntarily discharged in less than 30 days if the resident:

(a) has a medical emergency;

(b) is suffering from an acute psychotic episode; or

(c) commits a crime that causes serious bodily injury, death, or property damage.

(4) All discharges must be discussed with the resident's practitioner in order to ensure collaboration on a safe and appropriate discharge location.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IX CATEGORY D: SECLUSION ROOM REQUIREMENTS

(1) A category D facility or unit must have at least 1 room designated to be used for seclusion for every 24 beds.

(2) The location of these rooms must facilitate staff observation and monitoring of residents in these areas.

(3) Seclusion rooms may only be used by one resident at a time.

(4) Seclusion rooms must:

(a) be a minimum of 60 square feet, or if restraint beds are used a minimum of 80 square feet;

(b) be a minimum length of 7 feet and maximum wall length of 11 feet;

(c) be a minimum height of 9 feet;

(d) be accessed by an anteroom or vestibule that provides direct access to a toilet room;

(e) have door openings to the anteroom and toilet room with a minimum clear width of 3 feet 8 inches;

(f) be constructed to prevent hiding, escape, injury, or suicide;

(g) have walls designed to withstand direct and forceful impact and have materials that meet Class A or Class B finishes as defined by the 2012 NFPA 101;

(h) have monolithic ceilings;

(i) not contain outside corners or edges;

(j) have doors that swing out, have a clear opening of 3 feet 8 inches, and permit staff observation through a vision panel, while maintaining provisions for privacy;

(k) have tamper resistant fixtures, such as light fixtures, vent covers, and cameras;

(l) have electrical switches and outlets that are restricted within the seclusion room; and

(m) have door lever handles that point downward when in the latched or unlatched position, except for specifically designed anti-ligature hardware.

(5) A licensed nurse must provide residents with constant one on one supervision when in the seclusion room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for assisted living A, B ~~and~~, C, and D facilities. Assisted living facilities are a setting for frail, elderly, or disabled persons which provide supportive health and service coordination to maintain the residents' independence, individuality, privacy, and dignity.

(2) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2803 APPLICATION OF RULES (1) through (3) remain the same.

(4) Category D facilities must meet the requirements of ARM 37.106.2801 through 37.106.2886 and [NEW RULES I through IX].

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2804 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter ~~27~~ 28, the terms of subchapter ~~27~~ 28 will apply to assisted living facilities.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) through (15) remain the same.

(16) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3, MCA;

(c) a professional counselor licensed under Title 37, chapter 23, MCA;

(d) a psychologist licensed under Title 37, chapter 17, MCA;

(e) a social worker licensed under Title 37, chapter 22, MCA;

(f) an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health nursing; or

(g) a physician assistant licensed under Title 37, chapter 20, MCA, with a clinical specialty in psychiatric mental health.

~~(16)~~ (17) "Nursing care" means the practice of nursing as governed by Title 37, chapter 8, MCA, and by administrative rules adopted by the Board of Nursing, found at ARM Title ~~8~~ 24, chapter ~~32~~ 159, subchapters 1 through ~~17~~ 23.

(17) through (31) remain the same but are renumbered (18) through (32).

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the:

(a) through (e) remain the same.

(f) maximum number of A beds, B beds ~~and~~, C beds, and D beds in the facility;

(g) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2814 ADMINISTRATOR (1) remains the same.

(2) The administrator must meet the following minimum requirements:

(a) remains the same.

(b) has successfully completed all of the self study modules of ~~"The Management Library for Administrators and Executive Directors"~~ "A Management Reference for Executive Directors - Admin Level 1 Certificate Program," a component of the assisted living training system published by the ~~assisted living university (ALU)~~ Senior Living University (SLU) or an alternate, approved program; or

(c) remains the same.

(3) The administrator must show evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the assisted living facility.

(a) A nursing home administrator license or the ~~ALU~~ SLU certification may count as 16 hours of annual continuing education but only for the calendar year in which the license or certification was initially obtained.

(4) through (13) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2815 WRITTEN POLICIES AND PROCEDURES (1) A ~~policy~~ policies and procedures manual for the organization and operation of the assisted living facility shall be developed, implemented, kept current, and reviewed annually and as necessary to assure the continuity of care and day to day operations of the facility. Each review of the manual shall be documented, and the manual shall be available in the facility to staff, residents, residents' legal representatives, and representatives of the department at all times.

(2) remains the same.

(3) New policies, as developed, must be submitted to the department for review and approval.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2816 ASSISTED LIVING FACILITY STAFFING (1) remains the same.

(2) The administrator shall develop policies and procedures for ~~screening,~~ conducting criminal background checks, hiring, and assessing staff which include practices that assist the employer in identifying employees ~~that~~ who may pose risk or

threat to the health, safety, or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

(a) A name-based or FBI fingerprint background check shall be conducted on all employees who have accepted employment at an assisted living facility.

(i) The name-based background check shall be done through Criminal History Online Public Record Search (CHOPRS) through the Montana Department of Justice.

(ii) If an applicant has lived outside the state within the past five years, the assisted living facility must complete background checks in every state in which the applicant has resided within the past five years or conduct an FBI fingerprint background check.

(b) The administrator may allow an employee to work provisionally pending the background check results so long as there are no indications the employee poses a risk or threat to the health, safety, and welfare of the residents in the facility

(i) Indications that an employee may pose a risk or threat to the health, safety, and welfare of the residents of the facility include self-reported or otherwise known history of abuse, neglect, or exploitation, pending legal proceedings, currently on parole or probation, or any other indicator the facility determines reasonable.

(c) An assisted living facility may not employ any person who meets the criteria of 50-5-225(4), MCA.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) through (c) remain the same.

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801 et seq., MCA; ~~and~~

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101 et seq., MCA~~.~~ ; and

(f) staff that are responsible for assisting with self-administration of medication will receive orientation and training on resident medication administration records (MARs) and the five rights of medication administration.

(4) In addition to meeting the requirements of (3), direct care staff shall be trained to perform the services established in each resident service plan.

(a) Direct care staff will review each resident's current service plan or health care plan and sign indicating they have reviewed the plan and can perform the services required.

(5) through (9) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2817 EMPLOYEE FILES (1) remains the same.

(2) The following documentation from employee files must be made available to the department at all reasonable times, but shall be made available to the department within 24 hours after the department requests to review the files.

(a) and (b) remain the same.

(c) an initialed copy of the employee's job description; ~~and~~

(d) initialed documentation of employee orientation and ongoing training including documentation of Heimlich maneuver training, basic first aid, and CPR.; and

(e) the results of the employee's criminal background check.

(3) and (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE (1) remains the same.

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, category B or, category C, or category D facility, as specified in 50-5-226(2) through (4)(5), MCA.

(3) through (5) remain the same.

(6) The resident's needs assessment shall be reviewed and updated annually or at any time the resident's needs change significantly.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2822 RESIDENT SERVICE PLAN: CATEGORY A (1) Based on the initial resident's needs assessment, an initial service plan shall be developed for all category A residents within 24 hours of admission. The initial service plan shall be reviewed or modified within 60 days of admission to assure the service plan accurately reflects the resident's needs and preferences.

(2) remains the same.

(3) The resident's needs assessment and service plan shall be reviewed and updated annually, or at any time the resident's needs change significantly.

(4) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2823 RESIDENT AGREEMENT (1) An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or the resident's legal representative. The facility shall provide the prospective resident or the resident's legal representative and the resident's practitioner, if applicable, a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) through (c) remain the same.

(d) a statement explaining the resident's responsibilities including but not limited to house rules, the facility grievance policy, facility smoking policy and

~~policies~~, facility policy regarding pets, and the facility policy on medical and recreational marijuana use;

(i) a facility policy on medical marijuana must follow 50-46-318 and 50-46-320, MCA;

(e) through (2) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents shall be given a written 30-day notice when they are requested to move out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, ~~or~~ and the resident's ~~for resident's~~ legal representative, as applicable, when:

(a) through (d) remain the same.

(e) the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. Temporary absence for medical treatment is not considered a move out; ~~or~~

(f) the resident has failed to pay charges after reasonable and appropriate notice~~.~~; or

(g) the facility ceases to operate.

(2) The resident's 30-day written move out notice shall, at a minimum, include the following:

(a) and (b) remain the same.

(c) ~~the location to which the resident is to be transferred or discharged~~ optional discharge locations;

(d) and (e) remain the same.

(3) A ~~resident may be involuntarily discharged in less than 30 days~~ written notice of discharge in fewer than 30 days may be issued for the following reasons:

(a) through (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2829 RESIDENT FILE (1) At the time of admission, a separate file must be established for each category A, category B ~~or~~, category C, or category D resident. This file must be maintained on site in a safe and secure manner and must preserve the resident's confidentiality.

(2) The file shall include at least the following:

~~(a) the resident application form;~~

(b) through (e) remain the same but are renumbered (a) through (d).

~~(f)~~ (e) reports of significant events including:

~~(i) the provider's response to the event;~~

(i) documentation of notice to resident's practitioner;

(ii) through (3) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2835 RESIDENT UNITS (1) A resident of an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B ~~or~~, category C, or category D resident, must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and the below grade resident occupancy is or has been approved by the local fire marshal.

(2) through (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2836 FURNISHINGS (1) Each resident in an assisted living facility must be provided the following at a minimum by the facility:

(a) and (b) remain the same.

(c) clean, flame-resistant or non-combustible window treatments or equivalent, for every bedroom window;

(i) in a category D facility or unit, the use of blinds or curtains is not permissible. A flame-resistant or non-combustible window valence, not exceeding 14 inches in length, may be used;

(d) an electric call system comprised of a fixed manual, pendant cordless or two-way interactive, UL or FM listed system which must connect resident rooms to the care staff center or staff pagers; ~~and~~

(i) a resident room that is designated as double occupancy must be equipped with a call system for both occupants; and

(e) and (2) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2838 RESIDENT TOILETS AND BATHING (1) through (3) remain the same.

(4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.

(a) remains the same.

(b) Resident bathroom door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open.

(5) and (6) remain the same.

(7) Each resident bathroom or bathing room shall have ~~an~~ a fixed emergency call system ~~reporting~~ accessible to an individual collapsed on the floor that reports to

the staff location with an audible signal. The device must be silenced at ~~the~~ that location only ~~and shall be accessible to an individual collapsed on the floor~~.

(8) remains the same.

(9) In category D facilities or units, call cords or strings in excess of 6 inches shall not be permitted.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS (1) remains the same.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be noted in the resident's medication administration record ~~and the resident's service or health care plan by an appropriate licensed health care professional~~.

(3) Current practitioners' orders shall be documented and kept in all resident files.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2849 MEDICATIONS: RECORDS AND DOCUMENTATION

(1) remains the same.

(2) The record shall include:

(a) through (d) remain the same.

(e) resident specific parameters and instructions for PRN medications;

(i) documentation of when and why a PRN was administered, and follow up documentation as to the effectiveness of the PRN;

(f) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2854 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The facility shall comply with the rules governing the use, in long term care facilities, of restraints, safety devices, assistive devices ~~and~~, postural supports, and seclusion rooms ~~in long term care facilities~~. The provisions of ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905, and 37.106.2908 shall apply.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2855 INFECTION CONTROL (1) The assisted living facility must establish and maintain infection control policies and procedures sufficient to provide a safe, sanitary, and comfortable environment ~~and to prevent the transmission of disease~~ to help prevent the development and transmission of communicable

diseases and infections. Such policies and procedures must include, at a minimum, the following requirements:

~~(a) any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator or designee, in accordance with the policies and procedures instituted by the facility;~~

(a) a system for preventing, identifying, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, and visitors;

(b) standard and transmission-based precautions to be followed to prevent spread of infections;

(c) when and how isolation should be used for a resident, including:

(i) the type and duration of the isolation, depending upon the infectious agent or organism involved; and

(ii) a requirement that the isolation should be the least restrictive possible for the resident under the circumstances;

(d) the circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit disease;

(b) and (c) remain the same but are renumbered (e) and (f).

(2) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2860 FOOD SERVICE (1) through (4) remain the same.

(5) The facility shall employ food service personnel suitable to meet the needs of the residents.

(a) remains the same.

(b) if the cook or other kitchen staff must assist a resident with direct care outside the food service area, they must properly wash their hands before returning to food service; ~~and~~

~~(c) food service shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, food service establishments administered by the food and consumer safety section of the department of public health and human services.~~

(c) all food and drink are to be stored, at minimum, 4 inches off the floor; and

(d) a facility whose kitchen and dining services are inspected by the local county health department must provide the department a copy of their most recent inspection at the time of any survey.

(6) through (12) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING, AND FIRE CODES (1) remains the same.

(2) When a change in use ~~and~~, ownership, or building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B ~~or,~~ C, or D license endorsement to a previously licensed category A facility.

(3) remains the same.

(4) Exit doors ~~shall not include locks which prevent evacuation~~ must be operable on the resident side of the door with a single motion and may not require special knowledge for the resident to open, except as approved by the fire marshal and building codes agencies having jurisdiction or in a secured unit or building that services category C or category D residents.

(5) through (13) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2875 RESIDENT HEALTH CARE PLAN: CATEGORY B

(1) Within 21 days of admission to a category B status, the administrator or designee shall assure that a written resident health care assessment and resident certification is performed on each category B resident.

(2) and (3) remain the same.

(4) The category B resident's health care plan shall be reviewed quarterly, and if necessary revised upon change of condition.

(5) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2885 ADMINISTRATION OF MEDICATIONS: CATEGORY B

(1) through (4) remain the same.

(5) Only the following individuals may administer medications to residents:

(a) and (b) remain the same.

(c) an unlicensed individual who is either employed by the facility or is working under third party contract with a resident or resident's legal representative and has been delegated the task under ARM Title ~~8~~ 24, chapter ~~32~~ 159, subchapter 1 through ~~17~~ 23; and

(d) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2886 MEDICATIONS: RECORDS AND DOCUMENTATION: CATEGORY B (1) remains the same.

(2) The record shall include:

(a) through (d) remain the same.

(e) resident specific parameters and instructions for PRN medications;

(i) documentation of when and why a PRN was administered, and follow up documentation as to the effectiveness of the PRN;

(f) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2896 DISCLOSURES TO RESIDENTS: CATEGORY C

(1) remains the same.

(2) The facility must ~~obtain from the resident's legal representative a written acknowledgment that the information specified in (1) was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file~~ provide a resident or resident's legal representative with written documentation of the information specified in (1). A copy of this exchange must be kept as part of the resident file.

AUTH: 50-5-103, 50-5-223, 50-5-227, MCA
IMP: 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) and (2) remain the same.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) remains the same.

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, ~~in which case~~ the resident does not have the right to refuse the use of restraints. In this situation:

(i) through (iii) remain the same.

(iv) the licensed nurse shall document in the resident~~'s clinical record~~ file the circumstances requiring the restraints and the duration; ~~and~~

(v) a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased and the resident's safety and the safety of others can be assured~~.~~ ; and

(vi) a licensed nurse must provide one on one supervision to a resident any time a restraint is applied.

(4) through (8) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, 50-5-1205, MCA
IMP: 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202, 50-5-1204, MCA

5. STATEMENT OF REASONABLE NECESSITY

The 2017 legislature enacted Senate Bill 272, an act creating a new license for assisted living facilities for those with dementia or other mental disorders who might be a harm to themselves or others, providing an involuntary commitment diversion option, amending laws related to involuntary commitment to address the added

diversion alternative, and amending 50-5-224, 50-5-226, 50-5-227, 53-21-122, 53-21-123, 53-21-127, 53-21-181, and 53-21-198, MCA. The bill was signed by the Governor on May 17, 2017, and became effective on October 1, 2017.

The Department of Public Health and Human Services (department) proposes to adopt New Rules I though IX establishing new minimum standards for category D assisted living facilities. The proposed new rules are necessary to establish licensing and regulation to ensure the health and safety of individuals residing in a category D assisted living facility in accordance with Senate Bill 272.

The 2019 legislature enacted House Bill 566, an act requiring background checks for all assisted living facility employees and amending 50-5-225 and 50-5-227, MCA. The bill was signed by the Governor on May 7, 2019. The department proposes to amend administrative rules to reflect the requirement to conduct criminal background checks, what forms of background checks can be conducted, the allowance of an employee working provisionally pending the background check results, and the need for the records of the results of such background checks to be kept in the employee files. The proposed new rules are necessary to establish licensing and regulation regarding background checks for assisted living facility employees in accordance with Senate Bill 566.

The department proposes to update the language used in this subchapter to reflect current practices and to be consistent with the terminology of other agencies involved with the assisted living facilities.

NEW RULE I

The department proposes to adopt this new rule to inform assisted living providers of the construction requirements of a category D facility or unit.

NEW RULE II

The department proposes to adopt this new rule to establish minimum requirements for administrators of category D assisted living facilities.

NEW RULE III

The department proposes to adopt this new rule to specify that category D assisted living facilities must inform a category D resident, or their representative, of the facility's overall philosophy and mission of the facility, criteria for move-in and discharge, process for resident assessment, process for developing and implementing a health care plan, the requirements of staff training, the facility's physical environment and design features, the frequency and type of resident activities the facility offers, any additional costs of care fees, and documentation on how the facility can keep all the residents safe. The category D facility must provide some way of indicating that this information has been provided to the resident or the resident's legal representative.

NEW RULE IV

The department proposes to adopt this new rule to establish minimum requirements for the type, qualifications, and training of direct care staff in a category D assisted living facility.

NEW RULE V
The department proposes to adopt this new rule to specify the time frame, frequency, and retention of resident assessments for category D residents in category D assisted living facilities.

NEW RULE VI
The department proposes to adopt this new rule to specify what information is required on a health care plan for a category D resident in an assisted living facility.

NEW RULE VII
The department proposes to adopt this new rule to specify medication administration guidelines for category D residents in category D assisted living facilities, and to specify when a category D resident's doctor and practitioner need to be notified of refused medication.

NEW RULE VIII
The department proposes to adopt this new rule to specify discharge planning and documentation of discharges.

NEW RULE IX
The department proposes to adopt this new rule to specify the construction requirements of a seclusion room within a category D facility, and to specify the supervision requirements of a resident in a seclusion room.

ARM 37.106.2802
The department proposes a change to this rule to include facilities with a category D endorsement in the coverage of this rule.

ARM 37.106.2803
The department proposes a change to this rule to apply this rule to facilities with a category D endorsement.

ARM 37.106.2804
The department proposes a change to this rule to update current information for the subchapter identified.

ARM 37.106.2805
The department proposes a change to this rule to include the definition of a "mental health professional," and to update the current title, chapter, and subchapter information for the Board of Nursing.

ARM 37.106.2809

The department proposes a change to this rule to include the requirement for addressing the number of category D beds in an assisted living facility.

ARM 37.106.2814
The department proposes a change to this rule to update the educational requirements for assisted living facility administrators.

ARM 37.106.2815
The department proposes a change to this rule to include a requirement timeframe for reviewing policies, and to require facilities to submit new policies to the department for review.

ARM 37.106.2816
The department proposes a change to this rule to include the requirement for the facility administrator to have a policy on conducting criminal background checks, the types of background checks that a facility can conduct, the ability for an employee to work provisionally pending the results of a background check, and indication of criteria that would make someone ineligible to work in an assisted living facility. The department also proposes a change to this rule to include the requirement for staff who assist with self-administration of medication to receive additional training, and that all direct care staff document review of resident service plans.

ARM 37.106.2817
The department proposes a change to this rule to include that the results of a criminal background check must be kept in the employee's file.

ARM 37.106.2821
The department proposes a change to this rule to include the requirement for addressing if a category D resident is appropriate for admission to the facility using a resident needs assessment. The department proposes a change to this rule to also update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes a change to this rule to include the annual review of a resident needs assessment under this rule.

ARM 37.106.2822
The department proposes a change to this rule to provide a specific timeframe in which a resident service plan must be developed, and to remove the portion of the annual review of a resident needs assessment from this rule.

ARM 37.106.2823
The department proposes a change to this rule to include the requirement for an assisted living facility to develop a policy on medical and recreational use of marijuana and provide guidelines on what the policy must include pursuant to 50-46-318 and 50-46-320, MCA.

ARM 37.106.2824

The department proposes a change to this rule to provide assisted living facilities more flexibility in determining a discharge location when issuing a 30-day written discharge notice. Additionally, the department proposes a change to this rule to add a reason to issue a 30-day written discharge notice. The department proposes to further change this rule to include that a written notice requirement for a discharge of fewer than 30-days' notice.

ARM 37.106.2829

The department proposes a change to this rule to include the requirement for a separate resident file to be kept for each category D resident. The department proposes to remove the requirement for a resident application and require documented practitioner notification for all resident significant events.

ARM 37.106.2835

The department proposes a change to this rule to include the requirement for a category D resident to not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and any below grade resident occupancy is or has been approved by the local fire marshal.

ARM 37.106.2836

The department proposes a change to this rule to provide category D assisted living facilities the requirements for window furnishings. The department proposes a change to this rule to specify that a double-occupancy room must be equipped with a call system for both occupants in the room.

ARM 37.106.2838

The department proposes a change to this rule to provide category D assisted living facilities the requirements for call system cords or strings. The department proposes further change to this rule to align the regulations on the doorknobs that are used for resident bathrooms and the requirement of a fixed call system in the bathroom with the current NFPA 101 and AIA guidelines.

ARM 37.106.2847

The department proposes to change this rule to remove the requirement that medication changes be noted in the service plan or health care plan by a licensed health care professional. The department proposes to further change this rule to require that current practitioners' orders be kept in all category A resident files.

ARM 37.106.2849

The department proposes to change this rule to require specific documentation on the medication administration record of PRN medication administration.

ARM 37.106.2854

The department proposes a change to this rule to include the need for adhering to seclusion room requirements.

ARM 37.106.2855
The department proposes a change to this rule to require assisted living facilities to have detailed policies on preventing and mitigating communicable disease and infections.

ARM 37.106.2860
The department proposes a change to this rule to remove the requirements of ARM Title 37, chapter 110, subchapter 2. These requirements were repealed in a previous rulemaking.

ARM 37.106.2866
The department proposes a change to this rule to include the requirement of the need for licensure approval of changes in a category D assisted living facility. The department proposes to further change this rule to include a change of ownership as a requirement for licensure to be based on meeting building code and fire marshal agencies standards for licensure, to specify that exit doors must be single motion.

ARM 37.106.2875
The department proposes a change to this rule to update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes to further change this rule to reflect the requirement of certification by a licensed healthcare professional for category B residents, and a review of the health care plan quarterly.

ARM 37.106.2885
The department proposes to change this rule to update the title, chapter, and subchapter information that address the Board of Nursing regulations.

ARM 37.106.2886
The department proposes to change this rule to require more documentation on the medication administration record of PRN medication administration for category B residents.

ARM 37.106.2896
The department proposes to amend this rule to modify the requirements of the facility for disclosing to the resident or the resident's legal representative information regarding the category C facility's processes.

ARM 37.106.2904
The department proposes a change to this rule to include the need for a licensed nurse to provide one on one supervision to a resident any time a restraint is applied.

Fiscal Impact
The department does not expect there to be any fiscal impact related to the adoption and amendment of these rules except as follows: category D is an optional

endorsement; unless a facility elects to provide category D services, there is no fiscal impact on a facility. Regarding background checks, some facilities were previously conducting background checks while others were using alternative means to screen employees as was required in the previous rule. There may be a fiscal impact for those facilities who were not previously utilizing the services of a criminal background check contractor.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 7, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The department attempted to contact the primary bill sponsors by email, mail, and phone on August 3, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.87.903, 37.87.1801, 37.87.1802, 37.87.1803, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965 pertaining to comprehensive school and community treatment | ) ) ) ) ) ) ) ) ) | AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On November 5, 2021, the Department of Public Health and Human Services (department) published MAR Notice No. 37-963 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1490 of the 2021 Montana Administrative Register, Issue Number 21.

2. On December 1, 2021, the department held a hearing via remote conferencing to consider the proposed amendment of the referenced rules.

3. On December 16, 2021, at 10:00 a.m., the department will hold a second public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85398741819; meeting ID: 853 9874 1819; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 853 9874 1819. Find your local number: https://mt-gov.zoom.us/u/kkQslwrJF.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

5. The department is amending the referenced notice to include a corrected fiscal impact statement. The department expected MAR Notice No. 37-963 to include ARM 37.85.105. The fiscal impact statement included in the original notice was in reference to the proposed amendment of ARM 37.85.105. The department decided not to amend ARM 37.85.105 in this notice and instead addressed it in a subsequent proposal notice. In removing the proposed amendment of ARM

37.85.105, the department unintentionally overlooked making changes to the fiscal impact statement that referred to that rule.

6. The fiscal impact statement is being amended as follows, new matter underlined, deleted matter interlined:

These proposed rule amendments ~~have estimated costs listed in the table below for the changes related to the Comprehensive School and Community Treatment program. The required state share will be provided by local education agencies through intergovernmental transfer agreements~~ will not result in a fiscal impact to the department's budget. The rate change for CSCT is proposed in MAR Notice No. 37-972, and the fiscal impact relating to the rate change is included in that notice.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Heidi Clark, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 17, 2021. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.4.1202, 42.21.158, and 42.21.162 and the repeal of ARM 42.4.1601, 42.4.1602, 42.4.1603, 42.4.1604, 42.4.1605, 42.4.1606, 42.4.1607, 42.4.1608, 42.4.1609, 42.4.1610, 42.4.1611, and 42.4.1612 pertaining to the electrical generation and transmission facility exemptions and new or expanded industry credit for corporate income taxes | ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT AND REPEAL<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Department of Revenue proposes to amend and repeal the above-stated rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later 5:00 p.m., December 17, 2021 to advise us of the nature of the accommodation you need. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 67th Montana Legislature enacted Senate Bill 35 (SB 35) which, among other things, repealed the electrical generation and transmission facility exemption provided in 15-24-3001, MCA, and the tax computation rollback provided in 15-24-3002, MCA, both of which expired in 2016. Similarly, Senate Bill 45 (SB 45) repealed the new or expanded industry credit for corporate income taxes which the 2019-2020 Revenue Interim Committee determined should be discontinued due to underutilization since its creation in 1975.

Based on the passage of SB 35 and SB 45, the department finds it necessary to propose the amendment and repeal of the above-stated rules to reflect the passage of the legislation. All amendments remove singular statutory references from each rule's implementing authority. The repealed rules reflect SB 45's repeal of the rules' primary authorizing statute: 15-31-127, MCA.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.4.1202 APPLICATION OF CREDITS AGAINST CORPORATE INCOME TAX LIABILITY (1) through (4) remain the same.

AUTH: 15-31-501, MCA
IMP: 15-30-2320, 15-30-2326, 15-30-2380, ~~15-31-125,~~ 15-31-130, 15-31-131, 15-31-132, 15-31-134, 15-31-150, 15-31-151, 15-31-161, 15-31-171, 15-32-115, 15-32-402, 15-32-503, 15-32-602, 15-32-701, 15-32-703, 15-50-207, 17-6-316, MCA

42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS
(1) through (13) remain the same.

AUTH: 15-1-201, 15-9-101, MCA
IMP: 15-1-121, 15-1-123, 15-1-303, 15-6-138, 15-6-201,15-6-202, 15-6-203, 15-6-206, 15-6-213, 15-6-215, 15-6-217, 15-6-218, 15-6-219, 15-6-220, 15-6-225, 15-6-228, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, ~~15-24-3001,~~ MCA

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) through (7) remain the same.

AUTH: 15-1-201, 15-8-301, MCA
IMP: 15-6-201, 15-6-202, 15-6-229, 15-6-230, 15-8-201, 15-8-301, 15-16-613, 15-24-301, 15-24-303, ~~15-24-3001,~~ MCA

5. The department proposes to repeal the following rules:

42.4.1601 DEFINITIONS

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-8-111, 15-31-125, MCA

42.4.1602 CREDIT FOR NEW OR EXPANDING CORPORATIONS

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-124, MCA

42.4.1603 PERIOD OF ELIGIBILITY

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-124, 15-31-125, MCA

42.4.1604 MANUFACTURING

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-6-225, 15-31-124, MCA

42.4.1605 NEW CORPORATION

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-124, MCA

42.4.1606 EXPANDING CORPORATION

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-124, MCA

42.4.1607 COMPLIANCE WITH CERTAIN STATUTES REQUIRED

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

42.4.1608 SUBMISSION OF EMPLOYEE LISTS

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

42.4.1609 DETERMINATION OF NEW JOBS

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

42.4.1610 DETERMINATION OF WAGES

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

42.4.1611 AVAILABILITY OF TAX CREDIT

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

42.4.1612 WHEN CREDIT MAY BE CLAIMED

AUTH: 15-31-127, 15-31-501, MCA
IMP: 15-31-125, MCA

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than January 13, 2022.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person named in #6 no later than 5:00 p.m., January 13, 2022.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of requests necessary for the department to conduct a public hearing is 25 because the number of persons affected by the proposed action is estimated to be zero since the SB 35 tax credit expired in 2016, the department received no claims for the SB 45 tax credits in recent years, and there was no opposition to the legislation.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a different mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this notice is available through the Secretary of State's web site at sosmt.gov/arm/register/.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors of SB 35 and SB 45, Senators Hoven and Blasdel, respectively, were contacted by email on November 22, 2021.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

| | |
|---|---|
| /s/ Todd Olson | /s/ Brendan Beatty |
| Todd Olson | Brendan Beatty |
| Rule Reviewer | Director of Revenue |

Certified to the Secretary of State November 30, 2021.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

| | | |
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| In the matter of the amendment of ARM 44.11.224, 44.11.226, 44.11.227, 44.11.406, 44.11.409, 44.11.502, and 44.11.603 pertaining to campaign finance laws | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices (COPP) proposes to amend the above-stated rules.

2. The COPP will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m. on December 30, 2021, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

44.11.224 DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) and (2) remain the same.

(3) A candidate for the legislature may use the same account in a campaign depository for primary and general election contributions received without being required to segregate those funds if:

(a) the candidate maintains records concerning when a contribution is received, and for which election the contribution is designated for; and

(b) the account balance does not drop below the amount of general election contributions received until after the day of the primary election.

(3) remains the same but is renumbered (4).

AUTH: 13-37-114, MCA
IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the changes in designation of primary and general election contributions for legislative candidates adopted by the 2021 Montana Legislature through its passage and implementation of Senate Bill 224.

44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Senate Bill 224 of the 2021 Legislature repealed contribution limits from political committees to legislative candidates.

~~(1) Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to candidates for the state legislature are as follows:~~

~~(a) a candidate for the state house of representatives may receive no more than $1,850;~~

~~(b) a candidate for the state senate may receive no more than $3,050.~~

~~(2) These limits apply to total combined receipts for the entire election cycle of 2020.~~

~~(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.~~

AUTH: 13-37-114, 13-37-218, MCA
IMP: 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the 2021 Montana Legislature's repeal of aggregate contribution limits for candidates from political committees through its passage and implementation of Senate Bill 224. The rule number is being maintained to ensure the structure of the campaign finance rules follow the flow of a campaign.

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~$710~~ $1,000;

(b) a candidate for other statewide office may receive no more than ~~$360~~ $700;

(c) a candidate for all other public offices may receive no more than ~~$180~~ $400.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~$25,600~~ $100,000;

(b) a candidate for other statewide offices may receive no more than ~~$9,250~~ $75,000;

(c) a candidate for Public Service Commission may receive no more than ~~$3,700~~ $15,000;

(d) a candidate for senate may receive no more than ~~$1,500~~ $3,000;

(e) a candidate for all other public offices may receive no more than ~~$900~~ $2,000.

(3) Pursuant to 13-37-216 ~~and 13-37-218~~, MCA, all contributions must be included in computing these limitation totals, except the personal services exemption found in ARM 44.11.401.

(4) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-216, 13-37-218, MCA

44.11.406 MASS COLLECTIONS AT FUNDRAISING EVENTS, REPORTING (1) For the purposes of 13-37-229, MCA:

(a) "Mass collections" made at a fundraising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fundraising event, provided that mass collections do not include the proceeds of purchases of ~~$35~~ $50 or more for any candidate or political committee.

(b) remains the same.

(2) For purposes of preparing the statement of deposit required by 13-37-207(2), MCA, a record identifying the name of and amount received from each person must be maintained for a purchase of ~~$35~~ $50 or more at an event for any candidate or political committee. The proceeds of purchases of less than ~~$35~~ $50 may be recorded and deposited in lump sum without identifying the name of the contributor.

AUTH: 13-37-114, MCA
IMP: 13-37-207, 13-37-229, MCA

REASON: The COPP is amending this rule to reflect the change in fundraiser reporting itemization from $35 to $50 contained in Senate Bill 226, adopted and implemented by the 2021 Montana Legislature.

44.11.409 MONETARY DEPOSITS AND EXPENDITURES, ONLY THROUGH DEPOSITORY (1) and (2) remain the same.

(3) All expenditures~~, except expenditures from the petty cash fund,~~ shall be made by check drawn on the designated depository.

(4) ~~Except as stated in (5), all~~ All expenditures shall be drawn on the designated campaign depository by check, debit card, wire transfer, or other electronic means that clearly identifies the person receiving the payment, and no check or other withdrawal shall be drawn payable to the order of cash.

~~(5) Expenditures from the petty cash fund shall be documented by a receipt voucher designating the date the monies were withdrawn, the exact amount of the withdrawal and by whom the monies were withdrawn, the name of the person or vendor to whom the monies were paid, and the purpose for which the monies were used. The receipt vouchers shall be attached to the cancelled check or other withdrawal receipt which provided the monies for the petty cash fund for the period and shall be maintained as a permanent record of the treasurer.~~

(6) remains the same but is renumbered (5).

AUTH: 13-37-114, MCA

IMP: 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, 13-37-215, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect that petty cash usage is no longer allowed by candidates or political committees under Senate Bill 115, adopted and implemented by the 2019 Montana Legislature.

44.11.502 EXPENDITURES, REPORTING (1) through (4) remain the same.

~~(5) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.11.409.~~

(6) remains the same but is renumbered (5).

~~(7) For purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the "purpose" of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes. For example, two expenditures for direct mail advertisements should not both be reported as "Flyers."~~

(8) and (9) remain the same but are renumbered (6) and (7).

AUTH: 13-37-114, MCA
IMP: 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-232, MCA

REASON: The COPP is amending this rule to reflect the changes in expenditure reporting adopted by the 2021 Montana Legislature through its passage and implementation of Senate Bill 224. The COPP is also amending this rule to reflect that petty cash usage is no longer allowed by candidates or political committees under Senate Bill 115, adopted and implemented by the 2019 Montana Legislature.

44.11.603 DE MINIMIS (1) remains the same.

(2) Acts, contributions, or expenditures that may, depending on the circumstances, be considered de minimis include:

(a) remains the same.

(b) the provision by an individual or political committee of personal property, food, or services with a cumulative fair market value of less than ~~$35~~ $50 in the aggregate for any single election;

(c) through (3) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-1-101, 13-37-114, MCA

REASON: The COPP is amending this rule to reflect the change in reporting itemization and disclosure from $35 to $50 contained in Senate Bill 226, adopted and implemented by the 2021 Montana Legislature.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Office of the Commissioner

of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., January 7, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., January 7, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 137 persons based on the 1,369 candidates in the 2020 and 2021 election cycles.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. For ARM 44.11.224, 44.11.226, 44.11.227, 44.11.406, 44.11.409, 44.11.502, and 44.11.603, the bill sponsor contact requirements of 2-4-302, MCA, apply. Senator Fitzpatrick and Senator Kary were contacted via email on November 18, 2021, and via email and mail on November 22, 2021. On November 23, 2021, both senators responded that they had no comments on the amendments as proposed.

9. With regard to the requirements of 2-4-111, MCA, the COPP has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner
Office of the Commissioner of Political Practices

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 8.94.3101 and 8.94.3102 pertaining to the administration of the Montana Historic Preservation Grant (MHPG) Program | ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On October 22, 2021, the Department of Commerce published MAR Notice No. 8-94-191 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1357 of the 2021 Montana Administrative Register, Issue Number 20.

2 The department has amended the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT NO. 1: Comments were received by the department to reconsider the requirement that funds are distributed on a reimbursement basis since small museums lack the capital to begin a project that may take months until the amount is reimbursed.

RESPONSE NO. 1: Program grants will not require funds up front before payment is made, and grant recipients are not required to pay out of their own funds for invoices and then wait for reimbursement. Grantees receive notice of award before beginning a project. After executing a contract with the department and following proper procurement procedures, a grantee can begin work on the project. Once an invoice is received for work completed, the grantee can immediately submit that invoice along with draw forms. Grantees would not pay any funds out of pocket at this time in the process. Department staff would promptly process the draw in 7 to 10 business days. Most invoices are required to be paid within 30 days, and funds would be in the grantee's account with time to pay the contractor. This process pays for work as it is completed but does not require the grantee to provide the amount of the MHPG award upfront. Projects will have multiple draw requests, depending on the project size, timeline, and budget. While we do request time to process such draws, the department recognizes the need to expedite such requests as quickly as possible. The department will be in regular communication with each grantee and/or administrator throughout the start-up process, draw requests, and close-out process.

COMMENT NO. 2: Comments were received requesting the program to offer grants to small museums for operational costs.

RESPONSE NO. 2: SB 338 established specific criteria and requirements for the MHPG program, which are listed in 22-3-1306, MCA, and must be used as the basis for these guidelines. Operating expenses were not listed in the bill and would represent a departure from the legislature's guidance so are therefore not listed as an eligible expense.
For projects over $50,000, applicants are eligible to include 10% of the funds requested toward the administration of the project, meaning a smaller museum could obtain funds that address facility needs and obtain project administrative support. This is especially important to allow applicants to overcome limited capacity in administering a grant that may require additional staff time to process and oversee the grant through the duration of a project.

COMMENT NO. 3: Comments were received to consider limiting funds that go to for-profit entities and developer/construction companies that are not education or community focused.

RESPONSE NO. 3: The guidelines aim to meet the requirements of the legislation in making both public and private entities eligible for grant funding. See 22-3-1306(1), MCA. The guidelines further aim to provide flexibility to a wide array of project types in diverse areas of Montana. In the 2021 Legislative Session, of 26 grants awarded, 75% of grantees were non-profit or local governments, 50% were history museums or historical societies, 20% were for-profit local historic preservation efforts. No developers or construction companies received funding. All applicants must address the criteria set forth in 22-3-1306, MCA, including need for funding and the overall historic value of a project to Montana or the community.

COMMENT NO. 4: Comments were received asking if the department has the authority to divide the funding pool into separate categories for private businesses and nonprofits, creating a program for historic preservation projects and a smaller grant opportunity with a simpler application process.

RESPONSE NO. 4: The department may change the design of the program but must be guided by and include the requirements and structure created in 22-3-1305 through 22-3-1307, MCA. The legislature may consider the agency recommendations, but, ultimately, may select projects regardless of review or ranking. State funds are subject to all applicable state laws and requirements.

COMMENT NO. 5: A comment was received asking if a nonprofit museum can get funding for renovation or repair of a purpose-built building distinct from a historic structure or a modern building converted to museum use and if housing a history museum "designates historic significance" for a structure.

RESPONSE NO. 5: Yes. Section 22-3-1306, MCA notes history museums, historical societies, and historic sites specifically as part of the MHPG program and all are eligible for funding—new construction, rehabilitation of a modern building, historic preservation, or other needs such as climate control and security or other improvements such as lighting, display casing, shelving, and storage materials. A

history museum or historical society can apply regardless of the building they are housed within. A historic site can only apply if (1) the structure or site is listed on National, State, or Local Historic Registry, (2) the structure or site contributes to a historic district, or (3) the structure is more than 50 years old and has documented significance to the history of a Montana community or region. Ultimately, the legislature decides which projects are funded.

COMMENT NO. 6: A comment was received asking if the department has authority to add interpretive and internship funding to eligible program uses.

RESPONSE NO. 6: The department creates the competitive criteria for the MHPG program, which must be guided by and include the requirements outlined in 22-3-1305 through 22-3-1307, MCA. The criteria in 22-3-1306, MCA includes projects that stimulate the economy, improve physical structures (e.g., enhance security, address building code issues), and add historic value to the state. The list does not reference or relate to interpretive elements or internships and are therefore not listed as eligible expenses.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Adam Schafer
Adam Schafer
Deputy Director
Department of Commerce

Certified to the Secretary of State November 30, 2021.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

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|---|---|
| In the matter of the amendment of ARM 17.58.311, 17.58.313, and 17.58.325 pertaining to eligibility determination for petroleum storage tank cleanup | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On September 10, 2021, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-416 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1095 of the 2021 Montana Administrative Register, Issue Number 17.

2. The board has amended the rules exactly as proposed.

3. One comment in support of the rule amendments was received.

Reviewed by:

PETROLEUM TANK RELEASE
COMPENSATION BOARD

*/s/ Julia Swingley*
Julia Swingley
Rule Reviewer

BY: */s/ Keith Schnider*
Keith Schnider
Presiding Officer

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 18.7.202 and 18.7.206 pertaining to Utility Relocation costs | ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On October 22, 2021, the Department of Transportation published MAR Notice No. 18-185 pertaining to the proposed amendment of the above-stated rules at page 1360 of the 2021 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 18.7.202 and 18.7.206 as proposed.

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Malcolm "Mack" Long
Malcolm "Mack" Long
Director
Department of Transportation

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.121.301, 24.121.403, 24.121.405, 24.121.407, 24.121.1301, 24.121.1501, 24.121.1505, 24.121.1507, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, 24.121.2101, 24.121.2301; the adoption of New Rules I through III; and the repeal of 24.121.1503 pertaining to salons, shops, mobile salons or shops, schools, definitions, general application and license display requirements, variance requests, general requirements and prohibitions, license general information, premises, fixtures, general sanitation, restrooms, sinks, sanitizers, containers, cabinets, implements, instruments, supplies, equipment, sanitizing, disinfecting, preparation storage, handling, prohibited items, blood spills, continuing education instructors, unprofessional conduct, inspections, name change, closure, change of ownership, operation standards, and lighting | ) | NOTICE OF AMENDMENT, ADOPTION, AND REPEAL |

TO: All Concerned Persons

1. On July 9, 2021, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-17 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 826 of the 2021 Montana Administrative Register, Issue No. 13.

2. On August 3, 2021, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules via the videoconference and telephonic platform. Comments were received by the August 6, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter asked if there will be a separate application for mobile salons and shops.

RESPONSE 1: No, there will not be a separate application as mobile salons and shops fall under the existing license authority for salons and shops. Mobile salons and shops do have specific operating criteria so there will be additional questions added to the current applications to account for the operational and safety requirements associated with operation of a mobile salon or shop.

COMMENT 2: A commenter asked if there would be one statewide license or if the licenses would be issued county by county.

RESPONSE 2: Licenses to operate fixed location and mobile salons and shops are issued by the board under its authority for the entire state. However, licensed mobile salons and shops are still required to meet all applicable local and state laws for mobile businesses where they are operating, including but not limited to operating permits.

COMMENT 3: One commenter asked if the board or the city/county would determine what type of mobile structure was acceptable for licensure and services and included examples such as a mobile home or trailer.

RESPONSE 3: The board has not set any specific examples of the types of structures that meet requirements for mobile salons and shops. Rather, just as it has previously set minimum structure and operating requirements for fixed location shops and salons, these rules set structure and operating requirements for mobile salons and shops in ARM 24.121.407, 24.121.1501, 24.121.1505, and 24.121.1507. See also RESPONSE 2.

COMMENT 4: A commenter supported mobile salons and shops for greater access to services in rural areas.

RESPONSE 4: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.121.301, 24.121.403, 24.121.405, 24.121.407, 24.121.1301, 24.121.1501, 24.121.1505, 24.121.1507, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, 24.121.2101, and 24.121.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.121.410), NEW RULE II (24.121.412), and NEW RULE III (24.121.1302) exactly as proposed.

6. The board has repealed ARM 24.121.1503 exactly as proposed.

BOARD OF BARBERS AND COSMETOLOGISTS
ANGELA PRINTZ
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.201.101 board organization, 24.201.301 definitions, 24.201.505 firms – registration, and 24.201.532 nonroutine applications, and the repeal of 24.201.401 board meetings, 24.201.405 committees, 24.201.524 cheating, 24.201.1101 introduction, and 24.201.2101 renewals | ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On September 24, 2021, the Board of Public Accountants (board) published MAR Notice No. 24-201-54 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1170 of the 2021 Montana Administrative Register, Issue No. 18.

2. On October 15, 2021, a public hearing was held on the proposed amendment and repeal of the above-stated rules via the videoconference and telephonic platform. Comments were received by the October 22, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters suggested that the board should have more than one person reviewing applications which are submitted to the board for approval. Their concern, at least partially, stems from removal of current procedures which have up to eight persons reviewing each application to a non-specified number under the proposed rule.

RESPONSE 1: The board appreciates the concern and understands that its proposed change is a large shift in historical processing of applications. Over the past eight months staff has provided the board with sufficient evidence that they are capable of processing most applications that the board receives. This change in turn will result in faster licensure for many applicants who are well-qualified and tested, and ultimately receive a license in addition to having spent multiple years attempting to gain the required qualifications. These also include applicants initially found deficient by the board but are licensed by staff upon receipt of supplemental materials. The board believes that department staff, including an executive officer, counsel, and administrative support, can process applications without a significant loss of quality. Their review is secondary to NASBA reviewing applications for licensure which the board has entrusted on several matters. The board will continue

to evaluate the efficacy of the change moving forward but believes the current proposed amendment is appropriate at this time.

COMMENT 2: Several commenters suggested that the board look at its experience evaluation requirements under ARM 24.201.502 to clarify discrepancies in applications.

RESPONSE 2: The board will continue to evaluate its experience requirements moving forward to provide applicants the best footing in complying with the requirements while ensuring the board's mission of public safety.

4. The board has amended ARM 24.201.101, 24.201.301, 24.201.505, and 24.201.532 as proposed.

5. The board has repealed ARM 24.201.401, 24.201.405, 24.201.524, 24.201.1101, and 24.201.2101 as proposed.

BOARD OF PUBLIC ACCOUNTANTS
DAN VUCKOVICH, CPA
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.210.401 fee schedule, 24.210.426 trust account requirements, 24.210.801 fee schedule, 24.210.828 unprofessional conduct for property management licensees, and the adoption of New Rules I reasonable supervision and II high level of supervision | ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND ADOPTION |

TO: All Concerned Persons

1. On July 9, 2021, the Board of Realty Regulation published MAR Notice No. 24-210-47 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 848 of the 2021 Montana Administrative Register, Issue No. 13.

2. On July 30, 2021, a public hearing was held on the proposed amendment and adoption of the above-stated rules via the videoconference and telephonic platform. Comments were received by the August 6, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter asked if the statute authorizing the board to collect recovery account assessment fees would be eliminated.

RESPONSE 1: The 2019 Montana Legislature enacted House Bill 376 which repealed all the statutes related to the real estate recovery account, including 37-51-502, MCA, effective February 1, 2021. Following the statutes' repeal, the board has no remaining authority to collect the recovery fee.

COMMENT 2: One commenter inquired if the elimination of the recovery account fee will require errors and omission insurance for property managers.

RESPONSE 2: While House Bill 376 only repealed the real estate recovery account, House Bill 416 enacted requirements at 37-51-325, MCA, that licensed brokers and salespersons carry errors and omission insurance. The board does not have the authority to require that property managers carry errors and omission insurance.

COMMENT 3: Many commenters were concerned that sentence 1 in NEW RULE I(2) and NEW RULE II(2) could inaccurately lead readers to believe that any and all

aspects of supervision can be delegated to others. The commenters asked the board to clarify this further.

RESPONSE 3: The board agrees with the commenters and is amending the new rules accordingly.

COMMENT 4: Many commenters suggested the board amend NEW RULE II(1) by replacing "and/or" with "or."

RESPONSE 4: The board agrees and is amending the rule accordingly.

COMMENT 5: One commenter stated that proposed NEW RULES I and II were vague compared to existing rules that are already in place.

RESPONSE 5: The board notes that the new rules are meant to be read with existing rules to provide additional guidance for supervising brokers.

COMMENT 6: Many commenters stated that NEW RULE I lacks clarity for supervising brokers and does little to strengthen existing rules.

RESPONSE 6: The board intends for NEW RULE I to be read with existing rules and provide additional guidance for supervising brokers. It is not supposed to replace any existing rules.

COMMENT 7: Several commenters asserted that auditing transactions after completion in NEW RULE I(1)(b) is unnecessary if documents are being reviewed as required by ARM 24.210.601(11).

RESPONSE 7: See RESPONSE 6. Further, NEW RULE I does not mandate that auditing occur after a transaction's completion.

COMMENT 8: Many commented that NEW RULE I(1)(c) is more ambiguous than the current rule requiring supervising brokers to ensure documents are appropriately prepared.

RESPONSE 8: The board does not agree that the new rule is more ambiguous and notes that the new rule further instructs supervising brokers to assist salespersons throughout the transaction.

COMMENT 9: Many commenters believed that requiring regular communication in NEW RULE I(1)(d) is unnecessary and questioned what "regular" would mean.

RESPONSE 9: See RESPONSE 6. Further, the board places the responsibility and discretion on the supervising broker to determine necessary regular communication with supervised salespersons.

COMMENT 10: Several commenters stated that New Rule I(1)(e) is vague and may leave supervising brokers guessing on how often to provide training. They believed that new regulations are not needed, and the board should enforce current regulations.

RESPONSE 10: See RESPONSE 6. The board places the responsibility on supervising brokers to determine appropriate training for supervised licensees.

COMMENT 11: Many commented that NEW RULE I(1)(f) lacks specificity and pointed out that "overseeing" is a new term not used elsewhere in the proposed new rules or in any current rules.

RESPONSE 11: The board agrees and is changing the term "overseeing" to "reviewing" in NEW RULE I.

COMMENT 12: Many commenters stated that supervising brokers were previously not allowed to delegate supervising responsibilities as mentioned in NEW RULES I(2) and II(2) which could be considered unprofessional conduct under ARM 24.210.641.

RESPONSE 12: See RESPONSE 3. The board notes that supervising brokers are ultimately responsible for supervised salespersons and having others assist with activities outlined in the new rules does not relieve a supervising broker of those responsibilities.

COMMENT 13: Many commenters believed that NEW RULE II(1)(a) is not specific enough to provide adequate guidance to supervisors. The commenters also noted that current rules do not provide any guidance on office policies and procedures.

RESPONSE 13: Supervising brokers are in the best position to develop policies and procedures to meet operational needs and standards of practice for their offices. It is the supervising brokers' responsibility to ensure that supervisees are following established policies and procedures.

COMMENT 14: Several commenters observed that NEW RULE II(1)(b) does not specifically require supervisor review and assistance of contracts prior to execution and believed this should be the practice.

RESPONSE 14: The board determined the language in the rule does indicate such review should occur prior to execution with the phrase "in preparing contracts."

COMMENT 15: Two commenters appreciated the efforts to better define rules for supervising brokers and agreed there needs to be more accountability for supervising brokers. The commenters suggested the board obtain input from legal counsel of local professional associations to assist with the rule drafting.

RESPONSE 15: The board engaged in substantial discussion with stakeholders during multiple board meetings prior to moving forward with the rule changes, including those representing and advising professional organizations. The board also relied on its own professional expertise and legal advice from the board's attorney in drafting rule language. The board does not believe further review is necessary and is proceeding with the proposed changes.

COMMENT 16: One commenter believed there is good intent behind the new rules, but that the rules are too vague to help with supervision issues.

RESPONSE 16: The board concluded that NEW RULES I and II along with existing rules will provide additional helpful guidance for supervising brokers.

4. The board has amended ARM 24.210.401, 24.210.426, 24.210.801, and 24.210.828 exactly as proposed.

5. The board has adopted NEW RULE I (24.210.605) and NEW RULE II (24.210.606) with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (24.210.605) REASONABLE SUPERVISION (1) through (1)(e) remain as proposed.

(f) ~~overseeing~~ reviewing all advertising, in any media, of any service for which a license is required.

(2) Nothing in this rule shall ~~prohibit~~ prevent a supervising broker from ~~delegating supervisory authority to other experienced licensees or staff~~ engaging others to assist in providing the supervision outlined in (1). The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

NEW RULE II (24.210.606) HIGH LEVEL OF SUPERVISION (1) In addition to the requirements of ARM 24.210.605, a supervising broker shall provide a high level of supervision for licensed salespersons with less than two years of experience ~~and/or~~ or have less than ten transaction sides in a calendar year as follows:

(a) through (d) remain as proposed.

(2) Nothing in this rule shall ~~prohibit~~ prevent a supervising broker from ~~delegating supervisory authority to other experienced licensees~~ engaging others to assist in providing the supervision outlined in (1). The supervising broker takes full responsibility for any additional brokers, salespersons, or unlicensed assistants employed by the broker to assist or audit a licensee's business.

BOARD OF REALTY REGULATION
DAN WAGNER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.219.301 definitions, 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.605, 24.219.612, 24.219.712, 24.219.5006, 24.219.5007, and 24.219.5013 license requirements for licensed clinical social workers (LCSW), licensed master's social workers (LMSW), licensed baccalaureate social workers (LBSW), licensed clinical professional counselors (LCPC), licensed marriage and family therapists (LMFT), and licensed addiction counselors (LAC), 24.219.5020 examination – LAC, and the repeal of 24.219.606 professional counselor licensure candidate requirements and 24.219.2101 continuing education requirements | ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On September 24, 2021, the Board of Behavioral Health published MAR Notice No. 24-219-36 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1176 of the 2021 Montana Administrative Register, Issue No. 18.

2. On October 20, 2021, a public hearing was held on the proposed amendment and repeal of the above-stated rules via the videoconference and telephonic platform. Comments were received by the October 22, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter generally supported the proposed rule changes.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Multiple commenters were concerned the requirement that applicants with bachelor's degrees in social work become licensed as licensed bachelor's social workers is restricting job opportunities, as is the title protection of "LBSW," "licensed baccalaureate social worker," "LSW," and "licensed social worker."

RESPONSE 2: The board notes title protection was enacted under Senate Bill 102 (2021) and took effect on July 1, 2021, and no rulemaking is required for implementation. The board lacks the authority to alter title protection set by the legislature. As amended, 37-22-305(1)(b), MCA prohibits anyone without a proper license from representing themselves as a social worker, licensed social worker, licensed clinical social worker, licensed baccalaureate social worker, or licensed master's social worker, by using LSW, LCSW, LBSW, or LMSW after the person's name or by any other means. There are exemptions to licensure as an LBSW or LMSW under 37-22-301, MCA, and individuals qualifying for those exemptions are not required to become licensed as an LBSW or LMSW. As the board does not regulate agencies or the employer/employee relationship, any requirements that private employers have regarding licensure are outside the board's jurisdiction.

COMMENT 3: Multiple commenters stated the board's LBSW license requirements and process are confusing. Commenters asserted they were told that a grandfather clause would allow them to become licensed as LBSWs without passing an exam or obtaining 2000 hours qualifying supervised experience if they applied before May 1, 2021. The commenters stated that despite years of experience in the field, they will have to spend a lot of time obtaining the requisite hours under a candidate license. Commenters also stated that many employers hiring bachelor's and non-clinical master's degree holders were and are not structured to provide supervision by an LCSW and that there were no LBSW or LMSW in Montana prior to this legislation.

RESPONSE 3: The board is unable to create a grandfather clause via rulemaking as they must originate in statute as passed by the legislature. The current statute does not have grandfather clauses or exemptions from the supervised work experience requirements. Individuals who applied for LMSW or LBSW with qualifying supervised work experience prior to May 1, 2021, were allowed an exam exemption, but that was the only exemption. There never was any statutory exemption that allowed applicants to qualify for licensure without obtaining supervised work experience.

The board does have rulemaking authority to set supervised work experience hours required for licensure as an LBSW or LMSW and did put this into rule in 2020 to implement the 2019 legislation that created the licenses. Amendments to all these requirements are outside the scope of this proposed rulemaking, but the board may consider these suggestions in a future rulemaking. See also RESPONSE 2 regarding employer/employee relationships.

COMMENT 4: Multiple commenters asked the board to consider implementing a grandfather clause to allow those with bachelor's degrees to become licensed without obtaining additional experience and/or passing a licensing exam.

RESPONSE 4: See RESPONSE 3.

COMMENT 5: One commenter asked why supervised experience hours obtained during a bachelor's degree program do not count toward the 2000 hours of supervised work experience.

RESPONSE 5: Supervised work experience requirements for LBSW are outside the scope of this rulemaking. Further, the board notes that 37-22-307, MCA, requires that supervised work experience is earned under a candidate license which by its definition, is post-degree. The board lacks the authority to alter this requirement as it is established in statute.

COMMENT 6: Multiple commenters supported the amendments to ARM 24.219.501 and 24.219.512 allowing degree programs in CSWE candidacy accreditation status to meet degree requirements in addition to fully accredited CSWE programs.

RESPONSE 6: The board appreciates all comments received during the rulemaking process.

COMMENT 7: Multiple commenters supported the changes to allow marriage and family therapists (LMFTs) currently licensed in other jurisdictions to use equitable work experience to count toward education requirements. The commenters requested the board amend ARM 24.219.712 to only require two years of post-degree experience instead of five, stating it would be more in line with the profession's evolution in terms of license portability.

RESPONSE 7: When proposing these rules, the board determined based on the available data from other jurisdictions, that five years of experience for a minimum of a 48-semester-credit degree for individuals currently licensed as LMFTs in another jurisdiction was equitable experience for the current minimum requirement of a 60-semester-credit qualifying degree for those not licensed in another jurisdiction. The board will continue to track licensing requirements and trends and may consider reducing the years of equitable experience for LMFTs in a future rulemaking.

COMMENT 8: Multiple commenters requested the board amend ARM 24.219.712(1)(a) to match the credit requirements in ARM 24.219.701(2)(c) by changing the minimum credits of 48 semester or 72 quarter credits to 60 semester hours or 90 quarter hours.

RESPONSE 8: The board proposed the amendments to ARM 24.219.712 specifically to enact House Bill 177 (2021) which allows individuals who are licensed in other jurisdictions to qualify for Montana licensure with degrees having fewer credit requirements or when the degree requirements of the current licensure state are not substantially equivalent to Montana's. This increases license mobility while still ensuring adequate public protection. Increasing the minimum credits to 60 semester or 90 quarter hours would negate setting experience to count toward education and require all individuals licensed in another jurisdiction to have a 60-semester-credit degree which is the same requirement that existed prior to House

Bill 177 taking effect and the same requirement that exists for individuals not currently licensed in another jurisdiction in ARM 24.219.701.

4. The board has amended ARM 24.219.301, 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.605, 24.219.612, 24.219.712, 24.219.5006, 24.219.5007, 24.219.5013, and 24.219.5020 as proposed.

5. The board has repealed ARM 24.219.606 and 24.219.2101 as proposed.

BOARD OF BEHAVIORAL HEALTH
ELAINE MARONICK, LCPC, LMFT
CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

| | | |
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| In the matter of the adoption of New Rules I and II and the amendment of ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.115, 37.95.117, 37.95.140, 37.95.160, 37.95.163, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.718, and 37.95.1005 pertaining to child care licensing | ) | NOTICE OF ADOPTION AND AMENDMENT |

TO: All Concerned Persons

1. On October 8, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-959 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1277 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department has adopted the following rules as proposed: New Rule I (37.95.110) and New Rule II (37.95.169).

3. The department has amended the following rules as proposed: ARM 37.95.103, 37.95.108, 37.95.115, 37.95.140, 37.95.160, 37.95.163, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.718, and 37.95.1005.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>37.95.102 DEFINITIONS</u> (1) through (60) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, ~~53-4-601,~~ 53-4-611, ~~53-4-612,~~ MCA

<u>37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING</u> (1) through (8) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, ~~53-4-504, 53-4-507,~~ MCA

<u>37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS</u> (1) through (4) remain as proposed.

AUTH: 52-2-704, ~~53-4-503,~~ MCA
IMP: 52-2-731, ~~53-4-504,~~ MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Several commenters were concerned that the minimum capacity changes for a child care center will negatively impact providers participating in the STARS to Quality Program, the Best Beginnings Child Care Scholarship Program, and/or the Child and Adult Care Food Program.

RESPONSE #1: Senate Bill 142 changed the law in Montana Code Annotated (MCA), increasing the minimum capacity for a child care center. The department must revise the administrative rules to align with MCA as the increased statutory minimum capacity for a child care center became effective on October 1, 2021. The department is working with affected child care facilities to assist them in understanding the new law and, if desired, to change their licensing status to minimize negative financial impacts.

COMMENT #2: Several commenters were concerned about child-to-staff ratios during overlap care if a family and group home child care provider increases the facility's licensed capacity.

RESPONSE #2: Overlap care for a family or group home child care facility must be approved by the department based on a review of the provider's facility, square footage, and proof of fire and liability insurance. The department believes unchanged requirements will help ensure the safety of children during approved overlap care.

COMMENT #3: One commenter stated citations to 53-4-601 and 53-4-612, MCA were made in ARM 37.95.102. The commenter stated that 53-4-601 and 53-4-612, MCA have been repealed.

RESPONSE #3: The department will remove references to 53-4-601 and 53-4-612, MCA in ARM 37.95.102.

COMMENT #4: One commenter stated references to 53-4-503, 53-4-504, and 53-4-507, MCA were made in ARM 37.95.106 and 37.95.117. The commenter stated that 53-4-503, 53-4-504, and 53-4-507, MCA have been renumbered.

RESPONSE #4: The department will remove references to 53-4-503, 53-4-504, and 53-4-507, MCA in ARM 37.95.106 and 37.95.117.

COMMENT #5: A commenter supported the proposed rule changes aimed at identifying and preventing shaken baby syndrome and abusive head trauma, adding a grace period for immunizations for children experiencing homelessness and

children in foster care, and changing training requirements from first aid to pediatric first aid because these changes benefit all child care programs regardless of the type of care.

RESPONSE #5: The department appreciates the comment in support and agrees that these changes will benefit all child care programs in Montana.

COMMENT #6: One commenter expressed a desire for the department to amend or repeal administrative immunization requirements related to children and caregivers in daycare facilities based on the passage of House Bill 702.

RESPONSE #6: The department has not provided notice of any adoption, amendment, or repeal of rules regarding the immunization requirements for children and caregivers in child care facilities. Any such changes are beyond the proposed action of which the department has provided notice.

6. The department intends to apply these rules retroactively to October 1, 2021. A retroactive application of the rules does not result in a negative impact to any affected party.

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|---|---|
| /s/ Heidi Sanders | /s/ Adam Meier |
| Heidi Sanders | Adam Meier, Director |
| Rule Reviewer | Public Health and Human Services |

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

| | | |
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| In the matter of the adoption of New Rules I through V pertaining to public participation | ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On October 8, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-961 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1290 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department has adopted the above-stated rules as proposed: New Rules I (37.2.201), II (37.2.202), III (37.2.203), IV (37.2.204), and V (37.2.205).

3. No comments or testimony were received.

4. These rules are effective January 1, 2022.

/s/ Ashley D. Morigeau
Ashley D. Morigeau
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

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| In the matter of the adoption of New Rule I pertaining to health emergency waiver | ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On October 8, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-965 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1294 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department has adopted the above-stated rule as proposed: New Rule I (37.2.103).

3. No comments or testimony were received.

4. The department intends to apply this rule adoption retroactively to October 30, 2021. A retroactive application of the proposed rule adoption does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

| | | |
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| In the matter of the adoption of New Rule I regarding advanced metering opt-out | ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On January 29, 2021, the Department of Public Service Regulation published MAR Notice No. 38-5-248 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 111 of the 2021 Montana Administrative Register, Issue Number 2.

2. On May 14, 2021, the Governor signed into law House Bill 606, which codified new definitions of "advanced metering device," "advanced meter," and "advanced metering gateway device." It also extended the deadline for the Public Service Commission to determine whether an opt-out program for advanced meters and/or advanced metering gateway devices should be established. The new deadline is July 1, 2022. On July 23, 2021, the Department of Public Service Regulation published an Amended Notice and Extension of Comment Period on Proposed Adoption of the above-stated rule at page 896 of the 2021 Montana Administrative Register, Issue Number 14.

3. The department has adopted the following rule as proposed, but with the following changes from the amended proposal, new matter underlined, deleted matter interlined:

NEW RULE I (38.5.2603) ADVANCED METERING OPT-OUT PROVISIONS

(1) Electric and natural gas utilities shall provide customers with the option to remove an installed advanced metering device and replace it with an alternative meter approved by the commission, or to decline installation of an advanced metering device and retain the existing meter, as guided by a cost-based opt-out service tariff. An advanced metering device or advanced meter shall be defined as set forth in Montana Code Annotated. As used in this rule, "alternative meter" means all other meters that do not satisfy the definition of advanced metering device or advanced meter.

(2) Prior to installation of an advanced metering device, the utility shall give written notice to the customer at least 60 days in advance. Such notice shall clearly describe the opt-out process available to the customer and must include the following language: "Montana law allows customers to opt-out of the use of advanced metering devices according to terms and conditions set by the Montana Public Service Commission. No utility company can require the use of an advanced metering device. If you have questions about your opt-out rights, please contact the Montana Public Service Commission at 1-800-646-6150."

(3) The ~~electric~~ utility shall notify the customer of the following if a customer expresses interest in using an alternative meter:

(a) The customer will be required to pay the amount of the approved tariff charge determined by the commission, if applicable.

(b) The ~~electric~~ utility shall explain the facts concerning advanced meters and attempt to address any customer concerns prior to signing up a customer for ~~advanced meter~~ opt-out service. To the extent that the ~~electric~~ utility offers multiple options for the customer to obtain or retain either an advanced meter or an alternative meter, the utility shall explain each option and the allowable charges, if any, and allow the customer to choose from the options available.

(4) Any utility whose deployment of advanced metering devices commenced prior to the effective date of this rule must submit a schedule and a proposed tariff within 180 days of the effective date of this rule. ~~Any utility that begins deployment of advanced metering devices after the effective date of this rule must file a schedule and proposed tariff for opt-out service at least 120 days prior to the installation of advanced metering devices.~~ No utility may begin deploying advanced metering devices after the effective date of this rule without a commission-approved schedule and tariff for opt-out service.

(5) When applying for approval of an opt-out service tariff, the utility shall address circumstances unique to the utility in its tariff application, including what fees, if any, should be charged to recover costs, such as the cost of removing an existing advanced meter and the subsequent installation of an alternative meter, or costs associated with providing meter reading and billing services associated with the use of an alternative meter. Every initial or revised tariff submitted pursuant to this rule must describe all alternative meters available to customers and provide a reasonable estimate of costs associated with each alternative meter.

(6) To promote customer choice, every utility must identify at least one alternative to an advanced meter in every tariff submitted pursuant to this rule, for commission approval. ~~If practicable, utilities~~ Utilities should include at least one alternative type of meter that does not use radio waves or internet technology to measure, record, or send a customer's utility usage information. If a utility cannot provide such an alternative, the utility must state the reasons why, and the commission will examine all viable alternative meter~~ing~~ reading options available.

AUTH: 69-2-101, 69-2-102, 69-3-103, 69-3-203, 69-3-321, 69-4-1001, 69-4-1002, 69-4-1003, 69-4-1004, MCA
IMP: 69-4-1004, MCA

4. Before initiating rulemaking, the commission solicited written comment and held informal listening sessions to gather input from the public and interested parties on advanced metering devices. The commission received more than 100 comments in writing or in person at the two listening sessions, which were held on September 30, 2020, and October 7, 2020. The commission held a formal rulemaking hearing on February 23, 2021. The commission also contacted the sponsor of House Bill 606 to receive his comments on the rulemaking.

5. The department has thoroughly considered the comments and testimony received, both in the informal listening sessions and at the rulemaking hearing. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The commission received many comments from individuals who opposed the use of advanced metering devices and supported the creation of an opt-out program.

RESPONSE: The commission appreciates the commenters' input and support for the proposed rulemaking. The commission agrees that an opt-out program should be established, as demonstrated by the adopted rule.

COMMENT 2: Many commenters expressed concern that the deployment of advanced metering devices could cause or exacerbate heath issues due to radiofrequency (RF) radiation. Commenters said advanced metering devices can emit RF radiation at a greater rate and "density" than a cell phone or wireless router. Commenters were particularly concerned about the proximity of RF radiation sources near the home, and the effect that radiation could have on children and animals. Commenters noted that people have been forced to live "off-grid" to avoid exposure to RF radiation. One commenter said there were no independent studies that have shown advanced metering devices are safe. Commenters stressed the need for an opportunity opt-out of advanced metering devices.

RESPONSE: The commission notes that, without the proposed rulemaking, there would be nothing in rule or law that governs the installation of advanced metering devices in Montana.

COMMENT 3: One commenter requested the phrase "traditional meter" be replaced with "traditional analog meter" to ensure customers have access to an analog option that will not emit RF radiation. Another commenter noted that "traditional meter" is not defined in statute and is ambiguous.

RESPONSE: The commission revised its proposed rule in the amended notice published on July 23, 2021. That revised rule removed references to "traditional meters." The adopted rule adheres to the statutory definitions provided in 69-4-1001, MCA. The legislature directed the commission to consider whether to implement an opt-out program for advanced metering devices, as that term is defined in statute. The terms "traditional meter" and "traditional analog meter" are not defined in statute. The commission believes that ambiguity surrounding those terms could lead to confusion. Instead, the rule as adopted uses the term "alternative meter" to refer to any metering device that does not satisfy the statutory definition of "advanced metering device."

COMMENT 4: Several commenters expressed opinions on the opt-out fee. Of the commenters who supported the opt-out fee, one commenter supported the inclusion of an opt-out fee, but said there should be an opportunity for waivers. Another commenter said that the costs associated with allowing customers to opt-out would likely be manageable, but that utilities should provide specific information about the costs they incur. The commenter further stated that the lack of utility-specific information should not prevent the commission from establishing an opt-out program

and enabling the later collection of utility-specific information on a case-by-case basis.

RESPONSE: The commission appreciates the commenters' input, and notes that the terms of any opt-out fee, including the amount of the fee and any waivers for the fee, will be addressed in an evidentiary hearing on a utility's proposed tariff. Section (5) of the adopted rule requires utilities to address the circumstances that justify any proposed opt-out fee. The commission expects utilities requesting opt-out fees to provide credible evidence of the actual costs they will incur in serving customers who opt-out.

COMMENT 5: Of the commenters who generally opposed the opt-out fee, one commenter requested the addition of a medical waiver for the opt-out fee, so that customers with a diagnosed sensitivity to radio frequency radiation would not have to pay the opt-out fee. Another commenter said that those most affected by RF radiation may be the least able to pay the fee, given limited disability benefits, and requested a means-based waiver for the opt-out fee. A commenter noted there should be options to seek a waiver without using an electronic form. Other commenters said there should be no opt-out fee, given the health hazards posed by advanced metering devices.

RESPONSE: The commission appreciates the commenters' input, and notes that the opt-out fee, including the amount of the fee and any waivers for the fee, will be addressed in an evidentiary hearing on a utility's proposed tariff.

COMMENT 6: One commenter remarked that opt-out fees must be reasonable, affordable, and approved by the commission. The commenter stated that the average opt-out fee is $10 to $15 per month, and some states have lower fees for low-income customers. The commenter said that customers in New Mexico who read their own meters pay no opt-out fees. The commenter further said that a utility should not need to chare a large opt-out fee for dedicated trips to read a meter, as opt-out meters could be checked when the neighborhood substation is checked on a monthly basis. The commenter also said utility technicians can use handheld devices to enter meter data remotely, which would limit the amount of data entry required.

RESPONSE: The commission will consider the reasonableness of any opt-out fee proposed by a utility in an evidentiary hearing on the utility's proposed tariff. The commission will also consider the reasonableness of waivers for the opt-out fee. The commission anticipates that opt-out fees will be limited to the actual expense incurred by a utility in serving customers who have opted-out, which must be proven in an evidentiary hearing.

COMMENT 7: One commenter said the opt-out fee should not send a "price signal" to force customers to accept an advanced metering device.

RESPONSE: The commission agrees that opt-out fees should be based on actual costs. The commission will evaluate evidence of actual costs in future proceedings on proposed opt-out tariffs. The commission may consider including waiver provisions to the extent actual costs effectively force customers to accept advanced metering devices.

COMMENT 8: Several commenters discussed NorthWestern Energy's current efforts to deploy new meters for customers in Montana.

RESPONSE: The commission notes that NorthWestern Energy will be required to submit a tariff for commission approval under the proposed rule. The commission further observes that this rulemaking is necessary to provide a formal opt-out program for NorthWestern's current deployment of advanced metering devices.

COMMENT 9: One commenter noted the proposed rule does not address how customers living in condominiums and apartment complexes would opt-out of an advanced metering device. The commenter suggested that a verified, medical waiver should automatically eliminate all fees associated with removal of advanced metering devices in a building.

RESPONSE: The commission will address the scope of opt-out programs and any fee waivers in an evidentiary hearing on a utility's opt-out tariff. The commission notes that it does not have jurisdiction over the relationship between landlords and tenants, and it cannot resolve disputes between landlords and tenants regarding the installation of advanced metering devices.

COMMENT 10: Two commenters referred the commission to a D.C. Circuit Court Order from *Environmental Health Trust v. Federal Communications Commission*, 9 F.4th 893 (D.C. Cir. Aug. 13, 2021). In that decision, the D.C. Circuit found the FCC's determination that exposure to RF radiation at levels below current limits arbitrary and capricious. One commenter said the commission should not allow utilities to deploy advanced metering devices until that litigation is resolved.

RESPONSE: The commission appreciates the commenters' submission. The commission notes that the holding in *Environmental Health Trust* was based on the FCC's lack of a reasoned explanation about the potential harms of RF radiation. The D.C. Circuit Court further held that the FCC provided a reasoned explanation for its rejection of claims that RF radiation was "probably carcinogenic." Ultimately, however, the commission does not regulate RF radiation, nor is the present rulemaking the appropriate venue for the commission to make factual findings about the properties of RF radiation. The commission further notes that 69-4-1004, MCA, imposes a statutory deadline for the commission to act on the opt-out rulemaking. Accordingly, the commission cannot wait on the outcome of federal litigation.

COMMENT 11: One commenter suggested that utilities can purchase base model digital meters without an RF module or factory recertified analog meters, or keep existing, functional meters as they are removed from customers' premises. The

commenter also suggested utilities in other states could be contacted to determine how those utilities accommodate opting out of advanced metering devices.

RESPONSE: The commission appreciates the commenter's suggestion; however, the determination of what alternatives are or may be available is better suited to an evidentiary hearing on a utility's proposed tariff.

COMMENT 12: One commenter said informed consent language should be approved by the commission.

RESPONSE: The commission agrees that informed consent language should be approved by the commission. The proposed rule includes language that informs customers of their rights and the availability of the commission's staff to assist in understanding those rights.

COMMENT 13: One commenter said that the prudence and usefulness of advanced metering devices should remain subject to challenge in proceedings to consider opt-out tariffs. Another commenter said that there is no need for instantaneous detection of outages.

RESPONSE: In this rulemaking, the commission does not express any opinion on the prudence, usefulness, or need for advanced metering devices. Likewise, the proposed rule should not be construed to limit the issues parties may raise in future proceedings to consider opt-out tariffs. The commission initiated this rulemaking in response to 69-4-1004, MCA, which directed the commission to determine whether an opt-out program should be established. It is beyond the scope of this rulemaking to determine whether advanced metering devices are prudent, useful, or necessary.

COMMENT 14: Several commenters expressed concern about how information would be gathered from advanced metering devices and used. One commenter said the information could be used to predict granular details about a customer's energy usage. Commenters requested that the commission take steps to protect the privacy of information tracked through advanced metering devices. One commenter also said customers should be warned about the information that can be gathered by advanced metering devices as part of advising customers of their opt-out rights. Several commenters said advanced metering devices could be easily hacked by third parties or used by bad actors to track customers' behavior.

RESPONSE: The commission appreciates the commenters' privacy concerns, and notes that the Montana Legislature addressed the security and disclosure of energy use data in 69-4-1002, MCA. Beyond the provisions of that statute, the commission concludes that this rulemaking is a poor mechanism for anticipating and addressing how advanced metering technology may be used and develop in the future. The commission concludes that matters of privacy and security are better developed through contested case proceedings on the utility's proposed tariff, based on the particular devices the utility proposes to deploy.

COMMENT 15: One commenter stated that the definition of advanced metering device in statute is incorrect.

RESPONSE: The commission notes that the definition of advanced metering device was corrected in the 2021 Legislative Session. The commission's rule is based on the corrected statutory definition. The commission has revised the language of the rule to uniformly refer to advanced metering devices.

COMMENT 16: One commenter said that an opt-in process for advanced metering devices would be preferable.

RESPONSE: The commission appreciates the comment; however, 69-4-1004, MCA, requires the commission to determine whether an opt-out program should be established. The commission will separately address opt-in programs through rulemaking under 69-4-1005, MCA.

COMMENT 17: Several commenters said that advanced metering devices can catch on fire and explode more easily than other meters.

RESPONSE: The commission believes that the relative safety and reliability of proposed advanced metering devices is best addressed in an evidentiary hearing on a utility's proposed tariff. The commission anticipates that safety and reliability will vary depending on the device, manufacturer, and other factors.

COMMENT 18: One commenter said that advanced metering devices are experimental, and it would violate the Nuremberg Code to use these devices to experiment on a population.

RESPONSE: The commission notes it is not a judicial body, and is not the appropriate forum to bring claims based on a violation of ethical guidelines governing medical or research experiments.

COMMENT 19: Several commenters asserted that the Montana Constitution's right to a clean and healthful environment would be violated if utilities were permitted to install advanced metering devices.

RESPONSE: The commission does not regulate RF radiation, nor is it a judicial body responsible for determining whether RF radiation infringes upon the right to a clean and healthful environment. The commission believes that the legislative and judicial branches are better suited to determine whether RF radiation infringes upon the right to a clean and healthful environment.

COMMENT 20: Several commenters supported the use of advanced metering devices to allow customers to more closely track and conserve energy. One commenter said that advanced metering devices would provide customers with greater understanding of their energy and allow them to save money. The commenter also said advanced metering devices were also key to developing a

smarter grid that can accommodate distributed generation. The commenter further said advanced metering devices allow for different types of rate design, which could be beneficial to both customers and utilities.

RESPONSE: In this rulemaking, the commission does not express any opinion on the advantages and disadvantages of advanced metering devices. The features and functionality of advanced metering devices is beyond the scope of this rulemaking.

COMMENT 21: One commenter who treats patients with acupuncture and neuropuncture said that an advanced metering device could lead to electric or electromagnetic pollution near her patients.

RESPONSE: It is unclear whether the commenter owns or leases the space where she provides acupuncture and nueropuncture services. The commission notes that it does not have jurisdiction over the relationship between landlords and tenants, and it cannot resolve disputes between landlords and tenants regarding the installation of advanced metering devices. Assuming the commenter owns the premises where she provides these services, the proposed rule will create an opt-out procedure through which she can decline the installation of an advanced metering device.

COMMENT 22: One commenter expressed concern that net metering customers could be penalized for opting out of an advanced metering device, and encouraged the commission to carefully consider how smart-grid infrastructure can be deployed without preventing distributed generation customers from exporting energy to the grid.

RESPONSE: The commission will consider the utility-specific terms of an opt-out program in evidentiary hearings on proposed opt-out tariffs. The commission appreciates the unique circumstances of net-metering customers, and believes that a tariff proceeding is the best venue for addressing those customers' concerns.

COMMENT 23: One commenter asked the commission to consider whether 120 days was enough time to process a utility's proposed opt-out tariff, particularly if parties object to the proposed tariff.

RESPONSE: The commission appreciates the comment and agrees that 120 days may not allow adequate time. The commission further notes that the language of the proposed rule might suggest that a utility could begin a new advanced metering device project before the Commission has approved an opt-out tariff. The commission has revised the proposed rule to require a commission-approved opt-out tariff before beginning a new advanced metering device project. The commission acknowledges, however, that NorthWestern Energy has already begun deploying advanced metering devices, and the revision would not apply to a project that began before the effective date of the rule. Instead, a utility like NorthWestern Energy that has already begun deployment must submit a proposed opt-out tariff within 180 days, which will begin a contested case proceeding.

COMMENT 24: After the commission published the amended notice of proposed rulemaking, one commenter said the new proposal inappropriately expanded the scope of the rule to include electric and natural gas utilities. The commenter interpreted the definition of advanced metering device to refer to electric meters only. The commenter said that expanding the scope of the rule beyond electric utilities could lead to unintended consequences. The commenter asked the commission to strike references to natural gas in the proposed rule.

RESPONSE: The commission has consulted with the sponsor of the 2021 legislation, and the sponsor has stated that the bill was intended to address both natural gas and electric utilities. The commission has amended the rule to apply to both natural gas and electric utilities. Although the commenter did not specify the type of unintended consequences at risk, the commission believes the risk is minimal. The commission concludes that, in light of the concerns raised by opponents of advanced metering devices, the requirement for opt-out programs should be consistent between natural gas and electric utilities. It would defeat the purpose of the opt-out program if a utility could force a customer who opts out of an advanced metering device for electric service to accept such a device for natural gas service. The commission does not anticipate that this requirement will cause interruptions in service or otherwise impair natural gas service, as customers are currently served without advanced metering devices.

COMMENT 25: A commenter said the rule's discussion of alternative meters sets an unreasonable and unattainable expectation about the availability of analog meters. The commenter noted that one-way communicating automated meter reading has been used in Montana since 1997. The commenter said analog meters are no longer readily available for purchase. The commenter further stated that it would be futile and a waste of resources for the commission to require a discussion of alternatives to advanced meter reading devices.

RESPONSE: The commission appreciates the commenter's input; however, the commission believes factual findings about the availability of alternative meters should be made in an evidentiary hearing, rather than rulemaking. The commission further notes that its own rule is not the source of customers' expectations regarding the availability of alternative meters. Many commenters in this rulemaking have asserted that alternatives are available from a variety of sources based on their own internet research. It is unlikely that the commission's rule will materially change the expectations of those who have strong opinions on this subject.

In light of this comment, the commission has revised (6) to clarify that the utility should identify an alternative type of meter described in the rule, rather than a specific model. The phrase "if practicable" in (6) is unnecessary, because the final sentence of (6) discusses what a utility should do if it cannot include in its proposed opt-out program an alternative type of meter described in the rule. The commission's revisions further clarify that, if a utility cannot identify an alternative type of meter described in the rule, the commission intends to consider viable alternative meter reading options, rather than specific models of meters.

COMMENT 26: One commenter supported the inclusion of natural gas meters in the rule. The commenter also doubted whether utilities would have any difficulties sourcing analog meters.

RESPONSE: The commission appreciates the commenter's input. The commission believes that an evidentiary hearing on a proposed opt-out tariff is the best venue to make findings about the availability of alternative meters.

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
Chair
Montana Public Service Commission

Certified to the Secretary of State November 30, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.21.154, 42.21.155, 42.21.158, and 42.22.1311 and the repeal of ARM 42.21.125 pertaining to 2022 Personal Property Depreciation Schedules and Trend Tables and updated business equipment exemption | ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On October 8, 2021, the Department of Revenue published MAR Notice No. 42-1038 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1301 of the 2021 Montana Administrative Register, Issue Number 19.

2. On November 4, 2021, the department held a public hearing to consider the proposed amendment and repeal. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended and repealed the above-described rules as proposed.

4. The effective date of the department's amendments and repeal is January 1, 2022.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State November 30, 2021.

## NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

### Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

**Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

**Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

# HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

**Use of the Administrative Rules of Montana (ARM):**

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2021. This table includes notices in which those rules adopted during the period June 11, 2021, through November 19, 2021, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-11-614 Adoption of a State Plan of Operation for Federal Surplus Property, p. 378, 990

2-59-613 Examination Fees - Revocation and Suspension of Mortgage Licenses - Consumer Complaints - Confidentiality Agreements - Sharing Arrangements - Reinstatement of Expired or Suspended Licenses - Mortgage Loan Origination Disclosure Form - Bona Fide Not-For-Profit Certification - Applications for Initial Licenses Near Year End, p. 381, 715

2-59-617 Semiannual Assessments - Supervisory Fees for Banks and Credit Unions, p. 1004, 1319

2-59-618 Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Loan Originators, p. 1007, 1320

(State Lottery and Sports Wagering Commission)

2-63-621 Definitions - Places of Sale - Applications and Fees - Commission - Revocation or Suspension of License - Prizes, p. 1441, 1569

(Burial Preservation Board)

2-65-620 Permits for Scientific Analysis, p. 1092, 1546

AGRICULTURE, Department of, Title 4

4-21-273 Certified Noxious Weed Free Materials, p. 804, 1048

STATE AUDITOR, Office of, Title 6

6-264 Suitability in Annuity Transactions Act, p. 971, 1206
6-265 Pharmacy Benefit Manager Definitions and Network Adequacy, p. 1352
6-266 Rates and Premiums - Payment or Benefits, p. 1573

(Classification Review Committee)
6-263 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, p. 447, 919

COMMERCE, Department of, Title 8

8-94-187 Administration of the Montana Coal Endowment Program (MCEP)–Planning Grants, p. 591, 872
8-94-189 Administration of the Community Development Block Grant Cares Act (CDBG-CV) Program, p. 813, 1049
8-94-190 Administration of the CDBG Program, p. 976, 1208
8-94-191 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1357
8-111-188 Cash Advances, p. 815, 1053

EDUCATION, Title 10

(Board of Public Education)
10-54-291 Transformation Learning Program, p. 1576

(Montana State Library)
10-102-2101 Essential Standards - Library Board, Governance, and Working With the Director - Serving the Community - Personnel - Standard Notification, Final Arbiter, and Appeal Process - Deferrals, p. 818, 1138

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-548 Closing the Selway Park Fishing Access Site in Beaverhead County, p. 756
12-549 Closing Cooney Reservoir in Carbon County, p. 873
12-550 Closing Holter Lake From the Point of Log Gulch Campground to Holter Dam in Lewis and Clark County, p. 1054

(Fish and Wildlife Commission)
12-541 Policy Regarding the Management of Black Bear, p. 389, 920
12-545 Use of Deer or Elk Urine to Mask Human Odor, p. 391, 921

12-546 Implementation of the Commercial Use Cap on the Madison River, p. 395, 923
12-551 Licensing, p. 1579
12-553 Rest/Rotation and Walk/Wade Rules on the Madison River, p. 1609

ENVIRONMENTAL QUALITY, Department of, Title 17

(Petroleum Tank Release Compensation Board)
17-416 Eligibility Determination for Petroleum Storage Tank Cleanup, p. 1095

TRANSPORTATION, Department of, Title 18

18-184 Motor Carrier Services Safety Requirements, p. 450, 875
18-185 Utility Relocation Costs, p. 1360
18-186 Courtesy Car Grant Applications, p. 1445

JUSTICE, Department of, Title 23

23-12-261 Tracking Sexual Assault Evidence Kits Through a Statewide Sexual Assault Kit Tracking System, p. 727, 1056
23-16-260 Transfer of Interest Among Licensees and to New Owners - Shake-a-Day Games - Changes in Managers - Sports Pools and Sports Tabs - Electronic Player Rewards Systems - Procedure on VGM Malfunction - Use of AARS Data for Player Tracking, p. 1449
23-18-262 Certificates of Public Advantage, p. 453, 758

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

24-2-373 Commissioner's Active Supervision of the Board of Dentistry Regarding Designation of Public Health Facilities for Limited Access Permits, p. 731
24-11-372 COVID Unemployment Insurance Benefits, p. 534, 759
24-11-375 Disqualification for Unemployment Insurance Benefits Due to Failure or Refusal of a Drug Test - Requalification, p. 1011, 1404
24-13-386 Montana HELP Act Workforce Development Services, p. 1461
24-17-380 Prevailing Wage Rates for Public Works Projects, p. 1259
24-21-378 Montana's Registered Apprenticeship Program - Recognition of Pre-Apprenticeship Programs, p. 1098, 1547
24-21-385 Apprenticeship Ratios, p. 1465
24-29-367 Medical Fee Schedules for Workers' Compensation Purposes, p. 397, 716
24-29-371 Medical Utilization and Treatment Guidelines for Workers' Compensation Purposes, p. 536, 761
24-29-374 Workers' Compensation Petitions for Reopening, p. 978, 1210

24-35-376 Independent Contractors, p. 1109
24-101-311 Requirements for Sexual Offender Evaluation Endorsement, p. 1468
24-122-2 Creation of a Limited Low-Pressure Boiler Operating Engineer's License - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees, p. 1113, 1552
24-142-3 Elevator Licensing Program - Fee Schedule - Continuing Education Credits Required - Continuing Education Sponsors and Courses, p. 1117
24-148-1 Licensure of Genetic Counselors, p. 1477
24-301-353 Modifications to the International Building Code Applicable to Both the Department's and Local Government Code Enforcement Programs, p. 596, 1216

(Unemployment Insurance Appeals Board)
24-7-387 Unemployment Insurance Appeals Board, p. 1611

(Board of Personnel Appeals)
24-26-377 Practices, Procedures, and Grievances Before the Board of Personnel Appeals, p. 1105, 1551

(Board of Architects and Landscape Architects)
24-114-39 Fee Schedule, p. 733, 1406

(Board of Barbers and Cosmetologists)
24-121-17 Salons - Shops - Mobile Salons or Shops - Schools - Definitions - General Application and License Display Requirements - Variance Requests - General Requirements and Prohibitions - License General Information - Premises, Fixtures, and General Sanitation - Restrooms - Sinks - Sanitizers - Containers - Cabinets - Implements - Instruments - Supplies - Equipment - Sanitizing - Disinfecting - Preparation Storage - Handling - Prohibited Items - Blood Spills - Continuing Education Instructors - Unprofessional Conduct - Inspections - Name Change - Closure - Change of Ownership - Operation Standards - Lighting, p. 826

(Board of Chiropractors)
24-126-38 Impairment Evaluator Standards - Participation in Disaster and Emergency Care–Liability of Chiropractor - Applications, p. 736, 1554

(Board of Dentistry)
24-138-81 Fee Schedule - Approved Clinical Exam Criteria for Dentists and Dental Hygienists - Dental Hygiene Local Anesthetic Agent Certification, p. 1472

(Board of Medical Examiners)
24-156-91 Audit and Continuing Education Reporting Requirements - Continuing Education Audit, p. 456, 1057

24-156-92 Definitions - ECP Licensure Qualifications - ECP License Application - Continued Competency Requirements - Fee Schedule - Fees - Final Pre-Licensing Examinations, p. 1482

(Board of Nursing)

24-159-89 Definitions - Fees - Qualifications for Executive Director of the Board - Nurse Licensure Compact Rules - Program Standards - Program Annual Report - Establishment of a New Program - Program Director - Program Faculty - Waiver of Faculty Qualifications - General Requirements for Licensure as Medication Aide I and II - Prohibited Intravenous (IV) Therapies - Temporary Practice Permit - LPN and RN Licensure by Examination for Internationally Educated Applicants - Licensure by Endorsement - Renewals - Application for Prescriptive Authority - Prescribing Practices - APRN Competence Development - Purpose - Criteria for Delegation of Nursing Tasks - General Nursing Functions and Tasks That May Not Be Delegated - Conduct of Nurses - Grounds for Denial of a License, p. 673, 991

(Board of Occupational Therapy Practice)

24-165-25 Definitions - Deep Modality Endorsement, p. 593, 1321

(Board of Outfitters)

24-171-41 Fees - Outfitter Records - Outfitter's Assistants - Safety and First Aid Provisions - Application for Outfitter License - Outfitter Qualifications - Fishing Outfitter Operations Plan - Insurance for Outfitters - Outfitter Acting as Guide - Operations Plans and Amendments - NCHU Categories, Transfers, and Records - Renewals - Unprofessional Conduct and Misconduct - Web Site Posting of License Discipline, p. 1014, 1407

(Board of Pharmacy)

24-174-74 Definitions - Collaborative Practice Agreement Requirements - Transfer of Prescriptions - Drug Distribution and Control in an Institutional or Correctional Facility - Use of Drug Kits in Certain Institutional Facilities - Additions, Deletions, and Rescheduling of Dangerous Drugs - Registered Pharmacist Continuing Education–Approved Programs - Use of Contingency Kits in Certain Institutional Facilities, p. 1026, 1671

24-174-76 Dispenser Registration for Medical Practitioners, p. 1164, 1673

24-174-77 Waiving the Pharmacist to Pharmacy Technician Ratio for Vaccine Activities and COVID-19 Testing - Allowing Any Licensed Health Care Provider Authorized to Administer Vaccines Within Their Scope of Practice to Assist Pharmacists in Administering Vaccines, p. 1211

(Board of Physical Therapy Examiners)

24-177-36 Examinations - Unprofessional Conduct, p. 1263

(Board of Professional Engineers and Professional Land Surveyors)

24-183-44 Definitions - Teaching of Land Surveying Subjects - Continuing Professional Competency–Continuing Education, p. 401, 1215

(Board of Psychologists)

24-189-42 Fee Schedule - Required Supervised Experience - Continuing Education Requirements - Continuing Education Implementation - Representation of Self and Services - Psychologist Application Procedures - Licensure as a Psychologist by Experience (Senior), p. 740, 1058

(Board of Public Accountants)

24-201-54 Board Organization - Definitions - Firms–Registration - Nonroutine Applications - Board Meetings - Committees - Cheating - Introduction - Renewals, p. 1170

(Board of Real Estate Appraisers)

24-207-45 Incorporation by Reference of the Real Property Appraiser Qualification Criteria, p. 845, 1322

(Board of Realty Regulation)

24-210-47 Fee Schedule - Trust Account Requirements - Unprofessional Conduct for Property Management Licensees - Reasonable Supervision - High Level of Supervision, p. 848

(Board of Behavioral Health)

24-219-36 License Requirements for Clinical Social Workers (LCSW), Licensed Master's Social Workers (LMSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), and Licensed Addiction Counselors (LAC) - Examination–LAC - Professional Counselor Licensure Candidate Requirements - Continuing Education Requirements, p. 1176

LIVESTOCK, Department of, Title 32

32-21-317 Diagnostic Laboratory Fees, p. 599, 925
32-21-318 Brands Enforcement Division Fees - Freeze Branding, p. 1186, 1675
32-21-319 Fluid Milk and Grade A Milk Products, p. 1189, 1676
32-21-320 Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 1192, 1677
32-21-321 Scope of Rules, p. 1267
32-21-322 Diagnostic Laboratory Fees, p. 1269, 1678

(Board of Milk Control)

32-21-316 Definitions - Regulation of Unfair Trade Practices - Reports and Records - Payments to Pool Producers and Adjustment of Accounts, p. 539, 763

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-200 Oil and Gas Leases on State Lands, p. 459, 993
36-22-212 Categorical Exclusion of the State Revolving Fund Grant Issuance Under the Montana Environmental Policy Act, p. 889, 1323

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-943 Hospice Fee Schedule, p. 462, 764
37-944 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 687, 853, 1324
37-945 Fees for Copies of Birth Certificates - Amendment of Birth Certificate Gender Designations - Issuance of a Replacement Certificate, p. 608, 926
37-946 Youth Care Facility Requirements, p. 700, 1217
37-948 Nursing Facility Reimbursement, p. 711, 1139
37-949 Developmental Disabilities Program Provider Rates Update, p. 748, 1120, 1679
37-950 Marijuana Testing Laboratory Licensure, p. 859, 1059
37-951 Low Income Energy Assistance Program (LIEAP), p. 862, 1060
37-952 Licensed Marriage and Family Therapist, p. 981, 1232
37-953 Youth Foster Homes, p. 893, 1233
37-954 Certificate of Need, p. 1619
37-955 Allowing for COVID-19-Related Regulatory Discretion Beyond the Expiration of the Governor-Declared State of Emergency, p. 932
37-956 School Immunization Requirements, p. 984, 1328
37-957 Updating Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 1272, 1683
37-958 Severe and Disabling Mental Illness, p. 1124, 1555
37-959 Child Care Licensing, p. 1277
37-960 Allowing Students and/or Their Parents or Guardians the Ability to Opt-Out of School Health-Related Mandates for Health, Religious, Moral, or Other Fundamental Rights Reasons, p. 1141
37-961 Public Participation, p. 1290
37-963 Comprehensive School and Community Treatment, p. 1490
37-964 Waiver of Swing-Bed Requirements, p. 1330
37-965 Health Emergency Waiver, p. 1294
37-966 Optometric Services Rates, p. 1364
37-967 Marijuana Sampling Protocols, p. 1629
37-968 Montana Telecommunications Access Program, p. 1500
37-969 Big Sky Rx Benefit, p. 1504

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-248 Commission Procedural Rules, p. 545, 937
38-2-249 Department's Procedures for Collecting Fees and Other Charges, p. 1194
38-3-249 Montana's Motor Carrier Act, p. 1037, 1556
38-5-248 Advanced Metering Opt-Out, p. 111, 896
38-5-251 Pipeline Safety, p. 1507
38-5-252 Utility Electricity Voltage, p. 1510

REVENUE, Department of, Title 42

42-1030 Montana Medical Marijuana Program, p. 765
42-1031 Montana Medical Marijuana Program (MMP), p. 899, 1147
42-1032 Marijuana Provider Canopy Tier Size Increases - Limitations on Advertising, p. 908, 1127, 1333
42-1033 Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1369
42-1034 Production Increments Used in the Calculation of Taxes on Beer, p. 869, 1061
42-1035 Elimination of Competitive Bid Application Processing Fees, p. 915, 1152
42-1036 Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) Property Tax Assistance Program, p. 1044, 1409
42-1037 Temporary Operating Authority for Alcoholic Beverage License Applicants, p. 1132
42-1038 2022 Personal Property Depreciation Schedules and Trend Tables - Updated Business Equipment Exemption, p. 1301
42-1039 Debtor Appeals of Department Collections, p.1399
42-1040 Implementation of Compliance and Enforcement Requirements of the Montana Marijuana Regulation and Taxation Act - Local-Option Marijuana Excise Taxation, p. 1513
42-1041 Innovative Education Program Donations to School Districts and Student Scholarship Organizations (SSO), p. 1530
42-1042 Medical Marijuana Program Rules - Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1534
42-1043 Lodging Facility Sales and Use Taxes - Rental Vehicle Sales and Use Taxes, p. 1653

SECRETARY OF STATE, Office of, Title 44

44-2-242 Clarification of Business Services Division Filings and Fees, p. 550, 767
44-2-243 Records and Information Management Fees, p. 613, 878
44-2-244 Scheduled Dates for the 2022 Montana Administrative Register, p. 1135, 1410
44-2-245 Poll Watchers at Places of Deposit, p. 1198, 1684

44-2-246 Testing of Vote Tabulation Machines, p. 1200
44-2-247 Eligibility of Applicants to Be Issued and to Cast a Ballot, p. 1202, 1685
44-2-248 Notification Requirements for Emergency Rules Under the Montana Administrative Procedure Act, p. 1204, 1686
44-2-249 Legislative Oversight of Administrative Rules, p. 1306, 1687
44-2-250 Voter Registration Requirements - Provisional Registration - Late Registration Procedures - Voter Identification - Related Definitions, p. 1309
44-2-251 Maintenance of Active and Inactive Voter Registration Lists for Elections, p. 1667
44-2-252 Registration of a Person Who Employs a Paid Signature Gatherer, p. 1669

# MONTANA ADMINISTRATIVE REGISTER

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SECRETARY OF STATE

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